



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT
CRIMINAL APPEAL NO.19 OF 2016

JOHN ARKOI ALINGAAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No. 83 of 2016 of the Principal Magistrate's Court at Marsabit by Hon. T. M. Wafula, Resident Magistrate and Hon. B.M Ombewa – Senior Resident Magistrate)

JUDGMENT

JOHN ARKOI ALINGA, the appellant was convicted in respect of three counts. In count one the charge was of manslaughter contrary to section 202 as read with section 205 of the Penal Code. In count two the offence was being in possession of a firearm without a firearm certificate contrary to section 4(2) (a) as read with section 4(3)(b) of the Firearms Act Cap.114 laws of Kenya whereas in count three he was charged with an offence of being in possession of ammunitions without a firearms certificate contrary to section 4(2)(a) as read with section 4(3)(b) of the Firearms Act Cap.114 laws of Kenya.

The particulars of the offences were that on 4th January 2016 at **BURA ASUMA** along the shores of lake Turkana, in **Ileret** Marsabit County, the appellant unlawfully killed **Nyitiang' Ode**. On the 13th January 2016 at **BURA ASUMA** he was found in possession of a firearm and ammunitions without the requisite certificate.

He pleaded guilty in count one and was convicted and sentenced by Hon. Wafula to serve eight years imprisonment. In counts two and three he was tried by Hon. Ombewa who convicted and sentenced him to serve seven years imprisonment on each count. He ordered the sentence to run concurrently with the sentence in count one. He now appeals against the sentence.

The appellant was in person. He claimed the sentence was excessive and harsh.

The state opposed the appeal through Mr. Kibet, the learned counsel.

The facts of the prosecution case were briefly as follows:

The deceased and the appellant were fishermen at Bura Asuma. On 3.1.2016 the two were seen together going to their place of work.

In his defence the appellant contended that he killed the deceased by mistake.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO Vs. REPUBLIC 1972 EA 32**.

In an offence of manslaughter section 205 of the Penal Code provides as follows:

Any person who commits the felony of manslaughter is liable to imprisonment for life.

Upon my perusal of the record, I find that the appellant had indicated that the killing of the deceased was by mistake. There being no other evidence to the contrary, I am persuaded that the sentence in respect of count one was excessive. I am of the considered opinion that two years imprisonment in count one would be adequate punishment. I accordingly substitute the sentence of eight years imprisonment in count one with that of two years imprisonment.

The penalty for possession of firearm or ammunition without a certificate is prescribed in section 4(3)(b) of the Firearms Act as follows:

Any person who is convicted of an offence under subsection (2) shall-

(a) ...

(b) if the firearm is any other type or the ammunition for any weapon not being a prohibited weapon be liable to imprisonment for a term of not less than five, but not exceeding ten years:

Provided that, when the offence for which the person is convicted (not being an offence in relation to a prohibited weapon or to any ammunition therefor) is failure by neglect to renew a firearms certificate such person shall be liable to pay a fine at the rate of five hundred shillings per day for every day or part hereof during which his default continues but so that no person shall be liable to pay a fine greater than the maximum provided by this subsection and if such fine is not paid then to imprisonment for a term not exceeding two years.

The appellant was a first offender. He ought to have benefited from the minimum sentence. I am equally persuaded to reduce the sentences to five years imprisonment in count 2 and count 3. The sentences to run concurrently with the one in count 1. To that extent the appeal succeed.

DATED at Marsabit this 8th day of March, 2017

KIARIE WAWERU KIARIE

JUDGE