



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL CASE NO. 118 OF 2014

[arising from original Sirisia PM's criminal case no. 265 of 2014]

PATRICK KIBOI SOET APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

PATRICK KIBOI SOET the appellant herein was charged in the Lower Court with two counts; The first one is being in possession of firearm without a certificate, contrary to Section 4 (1) (a) of the Firearm Act Cap 114 Laws of Kenya.

The particulars of this offence are that on the 12th day of March, 2014 at around 3.00 p.m at Kamabus village, Emia location, in Cheptais District, within Bungoma County, the appellant herein was found in possession of a firearm namely AK 47 S/No. 48011889 without a firearm certificate.

The second count is of being in possession of ammunition without a firearm certificate contrary to Section 4 (1) (a) of the Firearm Act Cap 114 Laws of Kenya, of which particulars are that on the 12th day of March, 2014 at around 3.00 p.m at Kamabus village, Emia location in Cheptais district, within Bungoma county, the appellant herein was found in possession of 4 rounds of ammunition, calibre 7.62mm special, without a firearm certificate.

The prosecution case is that the appellant in this case was arrested by members of the public on allegation that he had an illegal firearm. He was taken to Kipsigon police station where he was re-arrested and booked in the O.B. on 12th March, 2014, the OCS Kipsigon police station, who is the PW-1 in this case interrogated the appellant on the allegation and he admitted that he had the said firearm.

PW-1 mobilized his officers namely corporal Fred Mwandiki, P.C. Marigi (PW-2) and P.C. Ngumi. They were led by the appellant to his home at Kamalgus village. They were further led by him beyond Malakisi river where they recovered an AK 47 firearm and 4 rounds of ammunitions. The firearm serial number is 48011889.

They went with the recovered firearm and the ammunitions to the police station. They charged the appellant with the present offences. The appellant said he had the firearm during the time of SLDF but he had not surrendered the same. He had no certificate to posses the same.

An exhibit memo form was prepared to take the firearm and the ammunitions to the Ballistic Expert. They were taken and a report was received back indicating that the recovered gun and the bullets were a

firearm and ammunitions, respectively, as defined under the Firearm Act chapter 114 Laws of Kenya.

The appellant in his defence opted to remain mute and called one witness. The witness said on 11.3.14 members of Nyumba kumi went and arrested the accused. They took him to Kipsigon police station. He was charged with being in possession of firearm. The issue was however about land. The person who made the report own the said firearm.

The trial court found the appellant guilty on both counts. He was accordingly convicted and sentenced to serve on each count 5 years imprisonment. Sentences were to run concurrently. He was also to be subjected to hard labour.

The appellant appealed on the grounds that,

1. His constitutional rights were violated during the trial.
2. The record was not properly analyzed before coming into the decision.
3. Evidence on exhibits was not properly weighed as it was not even dusted for finger prints.
4. Extraneous factors were considered in decision making.
5. The trial court misinterpreted the Law.

In his written submission the appellant indicated that he was arrested on 11.3.14 and charged on 17.3.14 of which was not within 24 hours which a suspect is required to be charged upon arrest, under the Constitution. He alleged the serial number of the allegedly recovered firearm was erased and corrected in the proceedings so as to fix him. OB of his arrest was not availed as exhibit, and those who arrested him were not called as witnesses. On these grounds he urged the court to quash the conviction, set aside the sentence, and set him at liberty.

The State prosecutor opposed the appeal. She averred that all ingredients of the offences were proved beyond reasonable doubt. The appellant is the one who led the police to recovery of firearm and ammunitions. The defence is not corroborated and sentence passed was not excessive. She urged the court to dismiss the appeal.

The prosecution two witnesses were forthright in their evidence. It's vivid that its the appellant who admitted to the O.C.S upon interrogation that he had a firearm. He led police to its recovery and 4 rounds of ammunitions were as well recovered. They were subjected to Ballistic examination and confirmed to be such. The two police officers who gave evidence had no cause to fix him. They are not even the ones who had arrested him but members of the public. The defence case is not believable. The appellant's witness did not indicate how he got the information on what he told the court. He did not even give the name of the alleged owner of the firearm. The defence case was rightly dismissed by the trial court.

The appellant was however right in his submissions when he said he was not taken to court within 24 hours. He was arrested as indicated in the charge sheet on 12.3.14 and charged on 17.3.14. There is nothing in the proceedings showing the court had allowed the police to hold him beyond the 24 hours allowed by the Constitution. However, this violation of his constitutional right does not accord him an acquittal. It does not mean that he did not commit the offences charged with or exonerate him from responsibility for their commission. It doesn't either render the trial a nullity. In the case of ***Julius Kamau Mbugua Vs. Republic, Criminal Appeal No. 50 of 2008***, the court on 8th October, 2010 held that such violation can be remedied by way of a claim for compensation by way of damages.

I accordingly find no ground that entitles this court to allow the appeal on conviction on both counts. The appeal on conviction is accordingly dismissed.

The appellant was sentenced to serve 5 years imprisonment on each count with hard labour, sentences to run concurrently. Section 4 (3) (a) which carries the sentence for the offences the appellant was convicted of, states that any person convicted of the offences will be liable to imprisonment for a term of not less than seven years and not more than 15 years.

The appellant herein was sentenced to a period of 5 years, a sentence which is below the minimum allowed in Law for each of the two offences.

I need remedy that to comply with the Law. I therefore adjust the sentence on each count to seven years imprisonment. Hard labour element is not mentioned in the Act and is therefore quashed.

Sentences to run concurrently.

JUDGMENT READ and SIGNED in open court this 17TH day of July 2017.

S. GITHINJI

JUDGE