



REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 171 of 2011

MOHAMMED FUGISHA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against both conviction and sentence in Criminal Case No.947/10 in Meru Law Courts- before R. N. Kimingi,CM)

J U D G M E N T

The appellant MOHAMMED FUGISHA was charged with an offence of being in possession of ammunition without a Fire Arm Certificate contrary to Section 4(1) Cap.114 Laws of Kenya. The appellant pleaded guilty to the charge. When facts were read to the appellant he admitted them as correct. The appellant was sentenced to serve 7 years imprisonment.

The appellant being aggrieved by sentence preferred this appeal. The appellant begged for leniency averring the sentence of 7 years imprisonment is too harsh. The appellant submitted that he is 35 years old and have young children in school and his wife is disabled and all depended on him for their daily bread. He further averred his parents are too old to take care of his family. The appellant stated that he is remorseful. The appellant pleaded for alternative sentence such as being put on probation or having the sentence set aside.

Mr. Jackson Motende, learned State Counsel opposed the appeal on sentence urging that the offence is serious. He urged the sentence provided by law is a minimum of 7 years imprisonment. He urged court not to interfere with the sentence.

Section 4(1), (2), (3), (a) of the Firearms Act provides:-

4.(1) Subject to this Act, no person shall purchase, acquire or have in his possession any firearm or ammunition unless he holds a firearm certificate in force at the time.

(2) If any person -

(a) purchases, acquires or has in his possession any firearm or ammunition without holding a firearm certificate in force at the time, or otherwise than as authorized by a certificate, or, in the case of ammunition, in quantities in excess of those so authorized; or

(b) fails to comply with any condition subject to which a firearm certificate is held by him, he shall, subject to this Act, be guilty of an offence.

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

(a) if the firearm concerned is a prohibited weapon of a type specified in paragraph (b) of the definition of that term contained in section 2 or the ammunition is ammunition for use in any such firearm be liable to imprisonment for a term of not less than seven years and not more than fifteen years.

The above mentioned section provides for a minimum sentence of 7 years imprisonment on one being convicted with an offence with which the appellant was charged. The sentence under the said section provides for minimum sentence of imprisonment of 7years. The trial court acted correctly and the sentence imposed was not harsh or unlawful or contrary to the law.

The upshot is that the appeal against the sentence is dismissed.

DATED, SIGNED AND DELIVERED AT MERU THIS 2ND DAY OF MAY, 2013

**J. A. MAKAU
JUDGE**

DELIVERED IN OPEN COURT IN THE PRESENCE OF:

1. Appellant in person
2. Mr. Jackson Motende for State.

**J. A. MAKAU
JUDGE**