



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: OMOLO, AKIWUMI & PALL, JJ.A.

CRIMINAL APPEAL NO. 102 OF 1996

BETWEEN

ELIJAH MAINA WATUTA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Nairobi (Juma J) dated 14th August, 1996

in

H.C.CR.A. NO. 989 OF 1994)

JUDGMENT OF THE COURT

This is a second appeal and can only be on points of law. There is no appeal against conviction and that is obviously correct. The issue was whether the learned judge of the High Court could lawfully enhance the sentence passed by the subordinate court. The offences of which the appellant was convicted of were committed on the 12th July, 1993. In December 1993, the law was changed imposing a severer sentence than that which was in force at the time when the offence was committed. The learned judge, on appeal purported to enhance the sentence to one of ten years imprisonment on the basis that the sentence imposed by the magistrate was unlawful.

With respect, we think the learned judge was in error. Act No. 11 of 1993 which increased the sentences imposed on firearm offences did not provide that it was to apply retroactively. Mrs. Oduor, for the Republic, relies on the case of *PATEL V REPUBLIC* [1968] EA 97, but that case deals with procedural amendments. She concedes, rightly in our view, that increasing the punishment to be awarded cannot be called a procedural amendment. She next argues that the magistrate was bound to apply the law that was operational at the time he imposed the sentence. We think that is not correct. The relevant period to be considered is the time when the offence was committed, unless the amending act says otherwise. In our view, the learned judge of the High Court was not, in law, entitled to enhance the sentence as he purported to do. We allow the appeal, set aside the sentences of ten years imprisonment imposed by the judge and restore the sentences of 5 1/2 years imprisonment which the learned magistrate had imposed. Those sentences will run concurrently from the date the magistrate imposed them. That was also the order of the magistrate. Those shall be our orders.

Dated and delivered at Nairobi this 22nd day of September, 1997.

R. S. C. OMOLO

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JUDGE OF APPEAL

A. M. AKIWUMI

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JUDGE OF APPEAL

G. S. PALL

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR