

REPUBLIC OF KENYA

Okello v Republic

High Court, at Nairobi June 26, 1985

O’Kubasu J

Court Martial Criminal Appeal No 25 of 1984

(Appeal from the Court Martial held at Langata Barracks)

Advocates

Appellant in person, unrepresented

Lt Col T K Githiora for respondent

June 26, 1985, O’Kubasu J delivered the following Judgment.

The appellant was convicted on his own plea of guilty, of mutiny contrary to section 25(2) of the Armed Forces Act (cap 199 Laws of Kenya). He was sentenced to ten (10) years imprisonment and dismissed from the Armed Forces. This sentence of imprisonment was later reviewed and reduced to six (6) years. The appellant now appeals against this reduced sentence.

At the material time the appellant was a service fire man at KAF Eastleigh. He lived courtside Eastleigh Base. On the August 1, 1982, at about 7.00 am he learned that the Government had been overthrown by the Armed Forces. He left his house for Eastleigh base where he arrived at about 9.30 am. He identified himself and was ordered to go to the armoury and arm himself. He went to a billet, put on uniform and then went to the armoury where he received an SLR and 20 rounds of ammunition. He was informed that there was opposition to the coup by loyal troupes. He spent most of the morning sitting at the parade square and then moved under a tree. There was then an announcement that the Government was still in the hands of President Moi. The appellant decided to flee at 1.00 pm. He changed into civilian clothes hid his rifle in his locker and went back to his home at Kariobangi. At about 11.00 pm on that day the wife of the appellant gave birth to twins. The appellant stayed with his wife in Nairobi until August 4, 1982, when he went with his family home. He stayed at home until August 24, 1982 when he surrendered at DOD. The appellant was co-operative and frank with investigators concerning his involvement on that day.

The appellant explained in some details how his Luo Customs demand that when one’s wife delivers twins then a long ceremony called “Yaworude” has to be performed. As his wife delivered on August 1, 1982 the appellant had to follow Luo Customs of remaining indoors for four days and then proceed to his home district for the ceremony. It was only after the ceremony that he reported at DOD.

The appellant said that he was supporting his father who was a widower aged 78 years old. The appellant is married with four children. One of the twins suffers from polio and epilepsy and appellant’s wife suffers from high blood pressure.

I have considered the appellant’s story and the facts narrated by the prosecutor before the Court Martial. From the facts the appellant’s involvement was minimal but his subsequent conduct was absurd. I shall however reduce the sentence of six (6) years imprisonment to five(5) years. Order accordingly.