

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 76 OF 1984

OLIVER MUNYAKA KABULU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the Court Martial at Langata Barracks, Bosire Esq)

JUDGMENT

The appellant, No 022745 Corporal Oliver Munyaka Kabulu, was convicted on his own plea of guilty to the offence of taking part in a Mutiny c/s 25(2) of the Armed Forces Act, Chapter 199 of the Laws of Kenya by a Court Martial sitting at Langata Barracks on November 22, 1982. He was sentenced to 8 years imprisonment together with dismissal from the Armed Forces.

The appellant's conviction and sentence together with his dismissal from the Armed Forces were confirmed on November 23, 1982. On review, the reviewing Authority did not interfere with the appellant's sentence. The appellant now appeals to this court against conviction and sentence.

On the night of July 31, 1982 the appellant was at a party at the Sports Pavilion at Kenya Air Force Eastleigh Air Base. At about 2.30 am on August 1, 1982, Senior Private Ochuka and Senior Private Geno stormed at this party, Spte Geno who was armed with a G 3 rifle started firing at the ceiling in the Sports Pavilion and in the course of so doing shot dead Corporal Kimwele Kang'aswa.

The appellant got scared and hid himself in the bathroom for a period of about 20 minutes. Later he went to his block where he slept. He was awoken by somebody who ordered him to put on his uniform and proceed to the armoury. He complied and at the armoury the appellant armed himself with a self-loading rifle but without ammunition. Thereafter he boarded a vehicle which took him to town - Nairobi - where he was deployed to guard the All Saints Cathedral. He was deployed here at about 3.00 am and while so deployed he slept on a verandah until 6.30 am when he boarded a vehicle which took him back to Eastleigh Air Base where he arrived at about 7.00 am.

At the Air Base the appellant was deployed at the All Saints Cathedral and after being there for some time he went to Uhuru Park where he stayed until 10.00 am. The appellant then went to Haile Selassie Avenue/ Uhuru Highway roundabout where he was arrested by the members of the Kenya Army.

As indicated above the appellant was a Corporal and had served the Kenya Air Force for a period of nearly 5 years. He was 28 years old.

The appellant's experiences in the early hours of August 1, 1982 at the Sports Pavilion at Eastleigh Air Base were clear pointers to him of what was happening at the Air Base. His subsequent activities were with the full knowledge of the Mutiny that was taking place at the Air base. His arming himself with a self-loading rifle although without ammunition and his being twice deployed at the All Saints Cathedral were acts in support and in furtherance of the Mutiny that was taking place on August 1, 1982.

His conviction of the offence set out above based on his own plea of guilty to the said offence was proper and his appeal against conviction is without any merit.

As concerns sentence, the appellant was a corporal with the Kenya Air Force, he was aged 28 years and

had served the Air Force for a period of about 5 years. Although he might have been drunk at the commencement of the events of August 1, 1982 he soon thereafter had ample opportunity to collect himself together and instead of taking appropriate measures as would have been expected of him in situations such as the one that was taking place on August 1, 1982 he opted to be involved in it. Indeed, had the appellant acted accordingly to what was expected of him the situation of August 1, 1982 would have been arrested at the Sports Pavilion at Eastleigh Air Base as early as 2.30 am on that day before it escalated. In these circumstances, the appellant's sentence of 8 years imprisonment together with dismissal from the Armed Forces cannot be said to have been manifestly excessive, or based on the wrong principle.

The appellant merited the sentence aforesaid.

The appellant's appeal against conviction and sentence is therefore dismissed in its entirety.

Dated and delivered at Nairobi this 23rd day of March, 1984.

J.E GICHERU

JUDGE