



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, MUSINGA & GATEMBU, JJ.A.)

CRIMINAL APPEAL NO. 83 OF 2014

BETWEEN

CHARLES ONYANGO ODHIAMBO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*(Appeal from a conviction and/or Judgment of the High Court of Kenya*

*at Kisumu, (Muchelule & Chemitei, JJ.) dated 21<sup>st</sup> January, 2014*

in

HCCRC. NO. 138 OF 2012)

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RULING OF THE COURT

1. On 19<sup>th</sup> December, 2012, the appellant was convicted by the Senior Principal Magistrate, Siaya, on a charge of possession of an imitation firearm contrary to **section 34 (1)** of the **Firearms Act**. He was sentenced to 7 years’ imprisonment. Being aggrieved by that conviction and sentence, the appellant preferred an appeal to the High Court. The appeal was dismissed. The appellant moved to this Court on a second appeal.

2. When the appeal came up for hearing before this Court, the appellant, who was unrepresented, sought leave to withdraw the appeal. He however urged the Court to order rectification of the committal warrant which shows that he had been convicted for robbery with violence and sentenced to 7 years’ imprisonment.

3. **Mr. Ketoo**, learned prosecution counsel, had no objection to the withdrawal of the appeal as well as the rectification of the committal warrant as sought by the appellant.

4. Pursuant to **rule 68 (4)** of the **Court of Appeal Rules**, we grant leave to the appellant to withdraw the appeal and hereby proceed to mark the appeal as withdrawn.

5. We have looked at the committal warrant in the record of appeal and realized that it shows that the

appellant was convicted for the offence of robbery with violence contrary to **section 296 (2)** of the **Penal Code** in **Criminal Case No. 445 of 2011** in the Senior Principal Magistrate's Court at Siaya, which is not correct.

6. The correct position is that the appellant had been charged with three counts.

Count 1 was for the offence of robbery with violence, count 2 was for the offence of rape and count 3 was for possession of imitation firearm. He was acquitted of **counts 1 and 2** but convicted of count **3**.

7. In the circumstances, we direct that the committal warrant be rectified accordingly as to reflect that the appellant was convicted for possession of imitation firearm contrary to **section 34 (1)** of the **Firearms Act**. Orders accordingly.

**DATED and delivered at Kisumu this 28<sup>th</sup> day of June, 2016.**

**D. K. MARAGA**

**JUDGE OF APPEAL**

**D. K. MUSINGA**

**JUDGE OF APPEAL**

**S. GATEMBU KAIRU**

**JUDGE OF APPEAL**

*I certify that this is*

*a true copy of the original.*

**DEPUTY REGISTRAR.**