



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT ELDORET**  
**CRIMINAL APPEAL 209 OF 2005**

**PSIONGO MWOMARENG ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An Appeal from a Judgment of the High Court of Kenya at Kitale (Karanja, J) dated 16<sup>th</sup> June, 2005  
 In*

**H.C.CR. A. No. 41 of 2004)**

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**JUDGMENT OF THE COURT**

**The appellant pleaded guilty to two counts; the first one of attempted murder contrary to *section 220 (a)* of the Penal Code, and the second one of being in possession of a firearm without a firearm certificate contrary to *section 4* of the Firearms Act, *Cap 114* of the Laws of Kenya. He was sentenced respectively to ten (10) years and three (3) years imprisonment.**

His first appeal to the High Court was allowed in the second count, but was dismissed in the first count. In the appeal before us, as was the appeal to the High Court the appellant’s complaint is against severity of sentence.

This being a second appeal, we are guided by the provisions of *section 361 (1) (a)* of the Criminal Procedure Code. According to that section, no second appeal lies on a question of fact, and by dint of that section, severity of sentence is a question of fact. That being the case, the appellant’s appeal being against severity of sentence is incompetent and it is accordingly dismissed.

Dated and delivered at Eldoret this 20<sup>th</sup> day of February, 2007.

**S.E.O. BOSIRE**

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**JUDGE OF APPEAL**

**E.M. GITHINJI**

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**JUDGE OF APPEAL**

J.W. ONYANGO OTIENO

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**