



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT KISUMU
CRIMINAL APPEAL 358 OF 2006

PETER OLOO JEREMIAH.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from an order of the High Court of Kenya

sumu (Warsame, J) dated 16th November 2006

in

H.C.CR.A NO. 48 OF 2006)

JUDGMENT OF THE COURT

PETER OLOO JEREMIAH, the appellant, was convicted by the Resident Magistrate, Bondo, on one count of preparation to commit a felony contrary to section 308(2) of the Penal Code and on one count of consorting with a person in possession of a firearm contrary to section 89(2) of the Penal Code. On the first count, he was sentenced to serve seven (7) years imprisonment and on the second count he was ordered to serve three(3) years imprisonment. The prison terms were ordered to be served concurrently.

Following his conviction and sentence, the appellant preferred an appeal to the High Court of Kenya at Kisumu. However, on 16th November, 2006, Warsame J. dismissed the appeal summarily under **section 352(2)** of the Criminal Procedure Code.

The principal complaint before us is, basically, that the learned Judge was wrong in summarily dismissing his first appeal without according it a hearing.

The record shows that the appellant had preferred before the superior court five grounds of appeal touching on various aspects of the evidence and legal issues that arose during the trial and in the judgment of the trial magistrate. However, these could not be canvassed by the appellant before the superior court because of the summary rejection. Before us, Mr Musau, the Senior Principal State Counsel, concedes that the appellant’s first appeal did raise points of law and ought not to have been rejected summarily. With respect, we agree with him.

We have considered the grounds of appeal raised by the appellant before the superior court. We are satisfied that they raise some points of law which mandated the superior court not to reject the appeal

summarily but to admit it to hearing.

We reiterate that **section 352(2)** of the Criminal Procedure Code applies where the High Court is satisfied that the appeal is solely on the sufficiency or otherwise of evidence and where the court is satisfied that the conviction of the appellant was based on full and sufficient evidence. If there is a point of law raised or otherwise apparent on record to warrant consideration, the appeal ought to be admitted to hearing and should not be rejected. See **Njoka v Republic [2001] KLR 175**.

In the final analysis, we conclude that the appeal to the High Court ought not to have been rejected summarily.

We allow the appeal, set aside the order dismissing the first appeal summarily under **section 352(2)** of the Criminal Procedure Code. We order that the first appeal be admitted to hearing and heard before the High Court according to law. We so order.

Dated and delivered at Kisumu this 22nd day of June, 2007.

P.K. TUNOI

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JUDGE OF APPEAL

E.O. O’KUBASU

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JUDGE OF APPEAL

E.M. GITHINJI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR