

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
(CORAM: TUNOI, GITHINJI, J.J.A. & DEVERELL, AG. J.A.)
CRIMINAL APPEAL NO. 90 OF 2002

BETWEEN

PATRICK KAMAU CHEGE.....APPELLANT
AND
REPUBLIC.....RESPONDENT

*(Appeal from a judgment of the High Court of Kenya at
Nakuru (Mr. Justice Visram) dated 17 th April 2002)*

in
H.C.CR.APP. NO. 489 of 2001.

JUDGMENT OF COURT

The appellant **PATRICK CHEGE KAMAU** was after trial convicted of being in possession of imitation of a firearm contrary to **section 34(1)** of the Firearms Act, Cap 114 Laws of Kenya and sentenced to 10 years imprisonment. His first appeal to the High Court of Kenya at **NAKURU** was summarily dismissed on 17th April, 2002.

The appellant had lodged not less than four grounds of appeal in his Petition of Appeal before the superior court and he now complains that the summary dismissal by that Court was wrong. The learned Assistant D.P.P. Mr. Gumo agrees and we think rightly so.

The only cases in which an appeal may be summarily rejected are those laid down in **section 352 (2)** of the Criminal Procedure Code – they are where the appeal is filed on the ground that the conviction is against the weight of the evidence or that the sentence is excessive. This was not so in the matter before us. The first appellate Court erred in summarily dismissing the appeal before it.

We allow this appeal and quash the order for summary dismissal. The appellant’s appeal lodged in the High Court is reinstated to hearing according to law.

Dated and delivered at Nakuru this 21st day of February, 2005.

P.K. TUNOI

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JUDGE OF APPEAL

E.M. GITHINJI

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JUDGE OF APPEAL

W.S. DEVERELL

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR