



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
(CORAM: TUNOI, O’KUBASU & GITHINJI, JJ.A.)
CRIMINAL APPEAL 92 OF 2005
BETWEEN**

CALEB OBURA KARANJA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*(Appeal from a judgment of the High Court of Kenya at Kisumu
(Tanui J) dated 10th May, 2002*

in

H.C.C.R.A. NO. 143 OF 2000)

JUDGMENT OF THE COURT

The appellant, **Caleb Obura Karanja**, was convicted by the learned Senior Resident Magistrate (F. M. Kinyanjui, Esq.) of being in possession of a firearm without a firearm certificate contrary to section 3 (2) of the Firearms Act and thereafter sentenced to ten (10) years imprisonment.

This being a second appeal only points of law may be raised for consideration. We have concurrent findings by the trial court and the first appellate court to the effect that the appellant was found in possession of a pistol which was produced in evidence as exhibit while the ballistic expert’s report was produced as Exhibit 3. That report must have been produced under section 77 (1) of the Evidence Act (Cap. 80), which provides:

“In criminal proceedings any document purporting to be report under the hand of a Government analyst, medical practitioner or of any ballistic expert, documents examine or geologist upon any person, matter or thing submitted to him for examination or analysis may be used in evidence”.

This is a case in which the appellant was spotted in rather suspicious circumstances by members of the public who called on Assistant Chief, **Hudson Mukaa** (PW3) and a Police Officer (PW4) to the scene. The appellant was found carrying a gun and as a result was arrested. The ballistic expert’s report indicated that the recovered pistol was S/No.258438 make Crvera Zastona. The appellant did not have a firearm certificate authorizing him to possess such a pistol. In convicting the appellant the learned trial magistrate, in his judgment, stated, inter alia:

“I am convinced that the accused had the custody and control of the gun. The burden was on the accused to show that he had a firearms certificate that was in force at the time. He failed to do so. I therefore find that the accused was in possession of the firearm unlawfully”.

When the appellant challenged the trial magistrate’s judgment in the superior court the learned Judge of

the superior court (Tanui J) adopted what, in our view, was the correct approach as regards a first appeal. In his judgment the learned Judge started by stating as follows:

“As this is the first appeal the appellant expects this court to submit evidence as a whole to a fresh and exhaustive examination and at the end to this court’s decision (sic). This court is expected to resolve any evidence in conflict and to give allowance to the fact that it did not see and hear witnesses whose evidence it is examining.

Bearing in mind those principles. I turn to examine the evidence adduced in this case. The prosecution called four witnesses and the appellant gave unsworn statement”.

The learned Judge proceeded to examine and analyse the evidence of each prosecution witness and considered what the appellant stated in his unsworn statement during the trial. Having done so the learned Judge concluded his judgment thus:

“I find that there was overwhelming evidence that the appellant was in possession of the pistol when he was found by (PW3), (PW1) and (PW2). The appeal as to the conviction does not have any merit.

The sentence of 10 years imprisonment is lawful and that it is not manifestly excessive in the circumstances.

The appeal stands dismissed”.

When he appeared before us, on the 21st June, 2005 the appellant handed to us what amounted to written submissions in which he challenges the findings of both the trial court and the first appellate court. We have considered these submissions and, in our view, they do not raise any points of law as they relate to issues of facts and evidence. On our part, we would say that the learned trial magistrate carefully considered the evidence before him and came to the inevitable conclusion that the appellant was in unlawful possession of the pistol. The appellant’s appeal to the superior court was properly considered by the learned Judge who adopted the correct principles as regards the duties of a first appellate court as set out in **OKENO V R** [1972] E.A. 32. The learned Judge was satisfied that the appellant was properly convicted and that the sentence imposed was lawful.

We have now considered the record of the trial court, the judgment delivered by the learned trial magistrate, the judgment of the superior court and we are of the view that this appeal lacks merit. We order that the same be and is hereby dismissed in its entirety.

Dated and delivered at Kisumu this 24th day of June, 2005.

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