



REPUBLIC OF KENYA

**IN THE COURT OF APPEAL**  
**AT MOMBASA**  
**CORAM: OMOLO, GITHINJI & DEVERELL, JJ.A.**

**Criminal Appeal 243 of 2004**

**GODFREY NJOGU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT OF THE COURT**

This is a second appeal from the decision of the superior court upholding the conviction by the Senior Principal Magistrate Joyce Manyasi of the appellant of the following offences: Robbery with violence contrary to section 296(2) of the Penal Code; possession of a firearm without a firearm certificate contrary to section 4(2) (a) as read with section 4(3) of the Firearms Act Cap.114; and possession of Ammunition without a firearms certificate contrary to section 4(1)(a) as read with section 4(3)(H) of the Firearms Act Cap. 114 of the Laws of Kenya.

This being a second appeal this Court is bound by the concurrent findings of fact by the trial court and the superior court unless there is some legal reason why as a matter of law this Court should not be so bound.

In this case we have studied with care the judgment of both courts and have not found any misdirections or error in law by either court in their approach to their respective judgments.

We therefore accept that the appellant was indeed properly identified by PW1 as the man who had driven into PW1's petrol station with two other persons and who had then produced a gun from an empty unga bag and approached the door of the complainant's office.

The complainant pushed past the appellant and ran from the office towards the road. As he did so a shot was fired from behind him which fortunately did not hit him. All this happened in broad daylight at 8.30 a.m. on 4th July, 2000.

The complainant was able to see the appellant at close quarter before he pushed past him and did pick the appellant out at the identification parade held on 12th July, 2000 after the Police had arrested the appellant on 7th July, 2000 as a result of information received.

When arrested the appellant was found to be in possession of a jua kali made gun and 3 rounds of 8.62mm ammunition. The firearms examiner produced a report confirming that the gun was a firearm under the Firearms Act and that the ammunition was live.

The appellant did not produce a firearm certificate and at no stage offered any explanation as

to how he came to be in possession of the firearm and ammunition.

We are satisfied that the superior court was right in its conclusion that the prosecution had established all the ingredients of each of the offences and proved the case against the appellant beyond reasonable doubt. The superior court did not find any flaw in the way the trial magistrate tried the case, and nor have we.

We therefore dismiss the appeal and confirm the conviction.

On sentence, the appellant was sentenced to death on the first count of robbery with violence. That is the only sentence allowed by law. But he was again sentenced to 10 years imprisonment on counts two and three, those sentences being ordered to run concurrently. The superior court confirmed all the sentences. We have said time and again that where an accused person has been sentenced to death, there is no reason for imposing other sentences on him. It would be unjust, in this case for the appellant to first serve the sentence of ten years imprisonment and to be hanged thereafter. As we have repeatedly said in a situation like this the only course open to the court imposing the sentences is to leave the other sentences in abeyance. Accordingly we order that the prison sentences imposed on counts two and three shall be held in abeyance and not served by the appellant.

**Dated and delivered at Mombasa this 29th day of July, 2005.**

**R. S. C. OMOLO**

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**JUDGE OF APPEAL**

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

**W. S. DEVERELL**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**