



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CRIMINAL APPEAL NO. 67 OF 1999**

BETWEEN

**JOSEPH NJOROGE KINGA APPELLANT
AND
REPUBLIC RESPONDENT**

(Appeal from an order of the High Court of Kenya at
Nairobi (Kuloba, J.) dated 6th May, 1999

in

H.C.CR.A. NO. 1396 OF 1998)

JUDGMENT OF THE COURT

The appellant, Joseph Njoroje Kinga, was after trial convicted by the Senior Resident Magistrate, Nairobi, on two counts of unlawfully being in possession of a firearm and ammunition without a firearm certificate contrary to section 4(2)(a) of the Firearms Act Cap 114 Laws of Kenya. He was sentenced to 42 years imprisonment on each count, the sentences being ordered to be served concurrently. His first appeal to the superior court was dismissed on 6th May, 1999, by Kuloba, J. He now appeals to this court.

On 11th June, 1997, Kasarani Police Station received an information that some people who had lodged in a room at Mwafrica Joji Bar at Githurai, Nairobi, had firearms. The Police organised a raid consisting of four officers, namely, IP Kariuki (PW5), PC Salu (PW1), PC Gichuki (PW2) and PC Ngetich (PW3). Following a search inside the room and under the bed upon which the appellant was sleeping the Police team recovered a bag which contained a gun and four rounds of ammunition. The appellant was then arrested and charged.

At the trial all the police officers, who took part in the search gave evidence narrating in detail the events that led to the recovery of the gun and the ammunition. The appellant averred that the charges against him were mere fabrication by the Police. He denied being inside the lodge or being found with any firearm or ammunition. However, the trial court disbelieved him and convicted him as charged.

On first appeal all the evidence and submissions made at the trial were gone into and the learned Judge came to the same conclusion as the trial magistrate.

Mr. Kiage, for the appellant, in a forceful and persuasive submission, argued before us that there were some factual misdirections by the two courts below. For example, that the serial number of the gun recovered from the lodge was mixed up with those of other guns and that the alibi set up by the appellant was not sufficiently considered by the trial Court and the first appellate court.

Looking at the whole body of the evidence and in the face of the concurrent findings of the court below,

we think, that this criticism is not justifiable. We cannot either say that the findings of fact were perverse or were unjudicially arrived at.

Moreover, this being a second appeal, this court does not interfere with concurrent findings of fact by the courts below except in certain very exceptional circumstances. See Reuben Karari V R (1950) 17 EACA 146 and Mohamed Farah Musa v R (1956) 23 EACA 469 . None of the exceptional circumstances exists here.

We are satisfied that the appellant was properly convicted and there is no ground whatsoever for us to interfere with his conviction.

We find no merit in this appeal and we dismiss it.

Dated and delivered at Nairobi this 31st March, 2000.

P. K. TUNOI

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

E. O'KUBASU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR