

The trial magistrate evaluated the evidence presented and found that the prosecution had made out its case beyond reasonable doubt, she convicted

the appellant and sentenced her to four years in prison. The appellant was dissatisfied by the magistrate's decision, hence this appeal.

The appellant has presented the following grounds of appeal;

- 1. The learned trial Magistrate erred in law and fact in convicting the appellant relying on the evidence of the prosecution without considering the defence evidence.
- 2. The learned trial Magistrate erred in law and fact in holding that the appellant was guilty of being in possession of a firearm without a certificate and as such occasioned a miscarriage of justice.
- 3. The learned trial Magistrate erred in law and fact when she imposed a harsh punishment of four (4) years imprisonment without considering the appellant's mitigation and other surrounding circumstances.
- 4. The learned trial Magistrate erred in law and fact when she accepted and based her conviction on the firearm produced by the prosecution as an exhibit when the prosecution failed to produce the accompanying forensic or test report of the appellant's fingerprint.

Duty of the first appellate court

This being a first appeal, this court is under a duty to reappraise the evidence, subject it to an exhaustive scrutiny and draw its own inferences of fact, to facilitate its coming to its own independent conclusion as to whether or not, the decision of the trial court can be sustained (see **Bogere Moses Vs Uganda S. C. Criminal Appeal No.1 of 1997** and **Kifamunte Henry v. Uganda, S. C. Criminal Appeal No.10 of 1997**, where it was held that: "the first appellate Court has a duty to review the evidence and reconsider the materials before the trial judge. The appellate Court must then make up its own mind, not disregarding the judgment appealed against, but carefully weighing and considering it."

An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion.

Against this background, I now set out to re-evaluate the evidence presented at trial against the appellant's grounds of appeal.

Consideration by court

In his submissions, counsel for the appellant abandoned ground 3 of appeal on harsh sentence. He argued grounds 1 and 2 together, ground 4 separately. I will resolve the grounds of appeal in the order argued.

Grounds 1 & 2: The gist of these two grounds is that the trial magistrate did not properly evaluate the evidence of both parties on record and thereby wrongly convicted the appellant.

For the prosecution to succeed on a charge of unlawful possession of a firearm, they must prove that the accused is in the possession of a firearm. As long as that can be proved, it becomes the obligation of the accused to prove that that possession is lawful by presenting a valid firearm certificate or providing any other lawful authority under which he or she possesses such a firearm.

PW1 is a Detective corporal attached to Fort Portal police. He stated that on 27/01/2022, he was asked by his commander to join in an operation to track down groups of robbers. They were able to arrest some robbers in Kiko Town Council among whom was Mugisa Francis Otafum. They then sought to recover the guns that had been used in several robberies and the said Mugisa led them to the appellant's home in Mugoma. The appellant's home was searched and an AK47 gun No. UG UPDF UE6198 was recovered from under the appellant's bed together with 28 rounds of live ammunition. The said gun was exhibited and the witness presented a search report. The search was conducted in the presence of the area local council chairperson.

PW2 D/ASP Muhanguzi Fred testified that they had received intelligence that there was a fire arm in the appellant's house. He conducted a search together with PW1 and the area local council chairperson. An AK47 gun No. UG UPDF UE6198 was recovered from under the appellant's bed on top of a crate of beer together with 28 rounds of live ammunition and the appellant was then charged accordingly. The recovered gun and ammunition were exhibited.

In her defence, the appellant led evidence of 3 witnesses. Herself as DW1, Consolate Jolly as DW2 and Kemigisa Scovia as DW3. The appellant testified that Mugisa Francis used to drink alcohol from the appellant's bar in Mugoma. The room she uses to operate the bar doubles as her bedroom and the two facilities are separated by a curtain. On 27/1/2022, the said Mugisa came to the appellant's bar wearing an army uniform and took some alcohol. He then left his gun at the appellant's place on top of a crate of beer. The said Mugisa had purportedly forgotten something in the barracks. The appellant waited for Mugisa to no avail until about 8 pm on the same day when she saw the said Mugisa arrested and the police found the gun that Mugisa had put under the bed.

During cross examination, the appellant confirmed that she did not have authority to have the gun in her house. She did not report its presence to the area local authorities.

Decision of Hon. Justice Vincent Emmy Mugabo Page 4 of 7 DW2 testified that she was away when the events of the day in question took place. She just saw a police van park at the appellant's home later on the 27/01/2022, did what they did and took the appellant to the police station.

DW3 testified that she is a neighbour to the appellant in Mugoma. One day, she saw a soldier go to the appellant's home and leave her with a gun. During cross examination, she testified that the appellant accepted to be left with the gun and it was not forceful.

Counsel for the appellant argued that the trial magistrate only considered the evidence of the prosecution and neglected that of the defence. He argued that the magistrate ought to have considered the evidence of the defence and the circumstances under which the gun was left in the custody of the appellant. Further that the evidence of both parties points to the fact that the gun belonged to Mugisa Francis and that the appellant honestly believed that Mugisa would come back to take his gun.

Counsel argued that Mugisa Ofatum who left the gun at the appellant's place is a UPDF soldier who is authorised to carry a gun. Further that it was wrong to charge the appellant with unlawful possession of a firearm since possession requires effective, manual or physical control where the appellant does not fall in any of those elements. As such, the prosecution did not prove their case to the required standard and it was wrong for the trial magistrate to convict him on the available evidence.

It is vital to note that the offence of unlawful possession of a fire arm deals mainly with possession and not ownership. The evidence of both the prosecution and defence at the trial pointed to one set of facts; that an AK47 gun was recovered on top of a beer crate under the appellant's bed. The gun was not covered or wrapped in any bag or covering for the appellant to impute that she could have mistakenly kept a package she did not understand. The gun was recovered from her house and she did not dispute this fact.

Apart from merely denying ownership of the gun which was not in question at trial, the appellant was not in possession of any certificate for the gun and ammunitions. She did not have any other authority to have a firearm in her house. The provisions of the *Firearms Act* under which the appellant was charged shift the burden of proof on the accused to prove legal possession by simply availing a valid certificate. She did not discharge the statutory burden imposed on her and accordingly the trial magistrate was right to convict her on the offence.

The conviction of the appellant is confirmed and Grounds 1 & 2 of appeal fail.

Ground 4: The learned trial Magistrate erred in law and fact when she accepted and based her conviction on the firearm produced by the prosecution as an exhibit when the prosecution failed to produce the accompanying forensic or test report of the appellant's fingerprint

Counsel for the appellant argued that there was no direct evidence that the appellant was in possession of firearm. All that the magistrate relied on was circumstantial evidence which was compatible with the innocence of the appellant. He relied on the case of *R Vs Kipkering Arab Koske (1949) 16 EACA 135* to argue that the court should only rely on circumstantial evidence if the exculpatory facts are incompatible with the innocence of the accused. He argued that the failure of the prosecution to produce a forensics report to show that the appellant actually touched the gun showed that the appellant was not in physical control of the gun.

Decision of Hon. Justice Vincent Emmy Mugabo Page 6 of 7 I need to note that the presence of an accused's finger print on a firearm is not a known ingredient of the offence of unlawful possession of a firearm. It may be relevant to prove possession if the firearm was not directly

found in the possession of the accused. In the present case, there was overwhelming evidence that the firearm was found on top of a crate of beer under the appellant's bed. This is a fact she admitted. She only denied ownership. Her fingerprints on the recovered firearm were not relevant in this case and the trial magistrate was right to ignore the same.

This ground of appeal is also without merit and the same fails.

Counsel for the appellant abandoned ground 3 of appeal on gravity of the sentence and I find it irrelevant to comment on the same.

From the resolution of the grounds of appeal above, this appeal is wholly without merit and is hereby dismissed. Each party shall bear their own costs.

It is so ordered

Dated at Fort Portal this 2nd day of June 2023

Vincent Emmy Mugabo

Judge.

Court: The Assistant Registrar shall deliver the judgment to the parties.

Vincent Emmy Mugabo Judge 2nd June 2023.

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