



LAAA & another v Republic (Criminal Miscellaneous Application E057 of 2023) [2023] KEHC 2414 (KLR) (Crim) (24 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2414 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL MISCELLANEOUS APPLICATION E057 OF 2023**

DR KAVEDZA, J

MARCH 24, 2023

BETWEEN

LAAA 1ST APPLICANT

LFAA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. I have gone through the lower court record, and the applications on record as well as the responses thereof.
2. Pursuant to the directions of this court for the age assessment to be conducted upon the 1st applicant (subject) a report was filed in this court which shows that the 1st applicant is a minor aged between 15-16 years old.
3. At the onset I find the lower court proceedings with respect to the 1st applicant irregular, in that a child cannot be convicted. The entire proceedings are therefore a nullity.
4. A nullity in the sense that the court proceeded as if it was dealing with an adult therefore failed to consider the best interest of the child. For that reason, the order of the court convicting the 1st applicant and subsequently ordering for her deportation are hereby quashed and set aside respectively.
5. Having said so, the question that begs for an answer is, How does this court proceed with the case of the minor who is charged jointly with her sister who is an adult?



6. This court caused a separate file to be opened for the minor since the minor is a child in need of care and protection. Under the Children's Act and International Law as well as Article 53 of the Constitution, this court is enjoined to consider the best interest of the child. And what is the best interest of this child?
7. *Vide* the amended Chamber Summons dated March 20, 2023, the applicant at paragraph 6 has pleaded with this court to stop the deportation and allow the applicant time to seek asylum.
8. Indeed, a child fleeing persecution cannot be repatriated to the Country which has endangered her life.
9. I have gone through the affidavit of the applicants sworn on February 21, 2023, which demonstrates clearly the torture and inhumane degradation that the applicants have been subjected to by their father.
10. Having so established, I would accordingly review the order of the trial court ordering deportation of the 2nd applicant LFAA.
11. Having so stated I have also gone through the report presented by the probation officer and it is favourable for both the subject (minor) and the second applicant.

I would accordingly issue the following orders:

- a) The order by the trial court convicting the 1st applicant is hereby quashed. In place thereof the court proceeds to make a finding of guilt.
- b) The deportation order issued by the trial court on February 17, 2023 is hereby set aside.
- c) The minor is released on a cash bail of Ksh 10,000/=. The cash bail to be paid in the lower court file not in this file.
- d) The 2nd applicant is released on a surety bond of 200,000/=. The surety has to be a Kenyan. To deposit a Practicing Certificate.
- e) The applicants shall reside at Runda Mimosa Annex Road House No XXXX and shall not change their residence without the authority of this court.
- f) The applicants to immediately present themselves to the Department of Refugee Services (DRS) to assess their suitability for asylum. The report of DRS to be filed in this court on June 23, 2023 virtually. The court shall be appraised of the terms.
- g) The applicants shall report to the probation officer once a month on a date agreed upon by the parties to ensure that the minor is still present in the country.

RULING READ AND DELIVERED ON 24TH DAY OF MARCH, 2023

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HON. DIANA R. KAVEDZA

JUDGE

In the presence of:

Quintus court assistant

Ms. Ntabo:

I agree with the ruling of the court.

Mr. Okeyo for the applicants.

Ms. Kanyangi – Probation Officer.

