

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL APPEAL NO. 12 OF 2020

MOHAMED HASSAN IBRAHIM.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. This appeal arises from the Judgement of Principal Magistrate P. N. Areri in Manderu Criminal Case No. 560 of 2019 where the Appellant had been charged with the offence of being unlawfully present in Kenya contrary to section 53(1) (2) as read with section 53 (2) of the Kenyan Citizenship and Immigration Act No. 12 of 2011.

The particulars of the offence are that on the 9th day of December, 2019 at Manderu Law Courts within Manderu East Sub-County in Manderu County, being an Ethiopia National, the Appellant was found unlawfully present in Kenya without a valid passport or permit authorizing him to stay in Kenya.

2. The Appellant pleaded guilty to the charge and the particulars of the offence and was fined Ksh.300,000/- or three years jail term in default and repatriation thereafter.

3. The main ground of appeal is on sentence which the Appellant submits is excessive in the circumstances of the case.

4. At the hearing of the appeal the Appellant explained that he was in Kenya seeking for greener pasture as Ethiopia neighbours Kenya and he used to work at the border town. He has a wife and 6 children back home.

5. The State on its part submitted that although the fine is within the law, it was however excessive in the circumstances of the case as three years is the maximum sentence for the offence.

6. Having considered the submissions by the Appellant and the State, the concession by the State on the maximum sentence and plea by the Appellant, I do agree that the maximum sentence meted out was harsh in the circumstances of the case.

7. The Appellant having served 16 months of the three years I will set aside the sentence of three-year, sentence him to 16 months and deem the sentence to have been duly served. Consequently, the Appellant is set free unless he is otherwise lawful held.

8. The Appellant will be escorted and repatriated to Ethiopia upon his release.

DELIVERED AND SIGNED AT GARISSA THIS 27th DAY OF MAY 2021.

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ALI-ARONI

JUDGE