



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CRIMINAL APPEAL NO. 26 OF 2020**

**FARAH IBRAHIM SALAT.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

1. This is an appeal arising from the decision of Senior Resident Magistrate Hon. P. Wasike in Mandera Criminal Case No. 14 of 2020 wherein the appellant faced three counts as follows:

**Count I**

Entering Kenya through a place not designated as a place of entry contrary to section 15(2) (a) of the Kenya Citizenship and Immigration Regulations, 2012 as read with section 60 of the Kenya Citizenship and Immigration Act No. 12 of 2011.

**Count II**

Failing to report entry to the Immigration Office contrary to Regulations 16(1) (a) and Regulation 16(6) of the Immigration Regulations, 2012 read with section 60 of the Kenyan Citizenship and Immigration Act No. 12 of 2011.

**Count III**

Failing to report departure to the Immigration Office contrary to Regulation 17(1) (a) and Regulation 17(a) of the Immigration Regulations, 2012 as read with section 60 of the Kenya Citizenship and Immigration Act No. 12 of 2011.

**Count IV**

Being unlawfully present in Kenya contrary to section 53(1) as read with section 53(2) of the Kenya Citizenship and Immigration Act No. 12 of 2011.

2. The Appellant had been charged alongside one other person not part of this appeal and both pleaded guilty the 4 counts. They were convicted and sentenced.

3. Being aggrieved by the conviction and sentence the Appellant moved this court on grounds that:

**-The case was not proved beyond reasonable doubt.**

**-The court took into account irrelevant and extraneous matters.**

**-The sentence was excessive.**

4. Having considered the record, the court called for investigation to ascertain the Citizenship of the Appellant. The state produced a letter from County Commissioner Mandera which letter established that the Appellant is a Kenyan citizen from Kamor Location in Mandera. Further he is a trained security officer who deserted duty after being posted to Kisimayu.

5. Based on the letter from the County Commissioner Mandera the State did not oppose the appeal.

6. The court considered the record, submissions by both the Appellant and the State and the relevant law.

The Citizenship and Immigration Regulations, 2012 requires that one entering Kenya does so at a designated point. The arrival must be reported to a migration officer. When departing from Kenya the departure has to be reported as well for purposes of Immigration control and one must also have valid travel documents.

7. Regulation 15 provides as follows:

**“15(1) A person who wishes to enter into or exit from Kenya shall enter or exit through any of the points of entry or departure; or the time specified in the fourth schedule.**

**(2) A person who enters into or departs from, or attempts to enter into or depart from Kenya through-**

**(a) a place that has not been specified as a point of entry or exit in the Fourth Schedule; or**

**(b) a place specified as appoint of entry in the Fourth Schedule at any time other than the time specified in relation to such place in that Schedule commits an offence.”**

8. The Appellant pleaded guilty in particular he admitted using the wrong entry point, failed to report departure from Kenya and his entry to an Immigration Office. He cannot therefore be heard to complain when convicted on Counts 1 & 11 on his own admission. No evidence of proof beyond reasonable doubt was required on this score.

9. As for the Count IV there was evidence on record that the Appellant is Kenyan and I therefore fault the magistrate for the conviction and sentence. I therefore set aside the fine of Kshs.200,000/= or 2 years imprisonment meted out on said count along side the order for repatriation to Somalia.

10. As regards the sentence in Count I and II the Appellant was to pay a fine of Kshs.800,000/- on both counts in default to serve 3 years imprisonment. It appears that the Appellant was not sentenced on 3<sup>rd</sup> Count. The sentences were to run concurrently.

11. The Appellant has been in prison for 1 year 5 months. The court is of the view that the fine of Kshs.800,000/- each for count 1 & 11 to be excessive in the circumstances of the case. The court is of the view that the period already served by the Appellant of 1 year 5 months is adequate sentence for the offences committed in Count 1& 11.

12. For the reasons above the Appellant is deemed to have served the sentences in Count 1 & 11 and is hereby released unless otherwise lawfully held.

**DELIVERED AND SIGNED AT GARISSA THIS 19<sup>th</sup> DAY OF MAY, 2021.**

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**ALI ARONI**

**JUDGE**