



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 81 OF 2019

HASSAN GABOW SALAN (Alias)

HUSSEIN IBRAHIM OMAR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant/accused was charged with offences of:

Count I: Personation of a person named in a document contrary to section 384 of the Penal Code. The particulars being that on the 9th day of August 2019, at Modicare area in Garissa township within Garissa County, uttered to No. 109975 PC Mourice Ouma a police officer attached to ATPU Garissa Detachment a document namely Application for Registration acknowledgement serial number 2439638932 a lawfully issued document to Hussein Ibrahim Omar by the national registrar of persons Jarajilla division Fafi District and falsely presented yourself to be the said Hussein Ibrahim Omar.

2. **Count II:** He was charged of giving false information to a person employed in the public service contrary to section 129(a) of the Penal Code. Particulars being that on the 9th day of August 2019, at Modicare area in Garissa township within Garissa County, he gave No. 109975 PC Mourice Ouma a police officer attached to ATPU Garissa Detachment an application for registration acknowledgement serial number 2439638932 an official document he knew had not been issued to him by the national registrar of persons Jarajilla division Fafi district intending to cause or knowing likely that he would cause the said No. 109975 PC Mourice Ouma a police officer attached to ATPU Garissa not to arrest him for the offence of residing outside designated area without permission from the authority contrary to section 25(f) of the Refugee Act of January 2006 which ought not to have been done if the true state of fact respecting which such document was given had been known to him.

3. **Count III:** Residing outside designated areas without permission from the authority contrary to section 25(f) of the Refugee Act of January 2006. The particulars were that on the 9th day of August 2019, at Modicare area in Garissa township within Garissa County, being a Somali Refugee at Hagadera Refugee Camp, he was found residing outside designated area namely Hagadera Refugee Camp without permission from the authority.

4. He pleaded guilty and on 13/8/2019 he was sentenced as follows:-

Count I: 6 months imprisonment.

Count II: 6 months imprisonment.

Count III: Fine of Kshs.10,000/= or in default 3 months imprisonment.

5. He was produced before me on plea of revision of the sentence.

6. The State urged court to peruse file and make ruling. The applicant/accused has stated that he relies on his documents lodged on 4/10/2019 on his plea for reduction of sentence.

7. In what he calls grounds of mitigation he states that he was arrested at Garissa while coming to visit and celebrate IDD with family who reside in Garissa and had no bad intention.

8. He says he has no guardians/parents and his siblings are very young. He is the sole bread winner. He says he did not know the

consequences of his actions. He says he has learnt a lesson never to repeat some wrongs again. He seeks to be let go join his siblings. He is repentant and remorseful.

9. The court has perused the file and noted that accused is a registered refugee at Hagadera Refugee Camp under the names of Hassan Gabow Salan. He has already served almost 4 months and has a balance of about 2 months to clear his term. He was a first offender.

10. I am convinced he has learnt a lesson and has suffered enough. The court finds that this is a proper and suitable case for revision.

11. Thus the sentence is substituted to the served period. Thus the court makes the following orders:-

i. The sentences imposed are substituted to the already served period.

ii. The accused is to be returned back to Hagadera Refugee Camp.

iii. Orders accordingly.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 28TH DAY OF NOVEMBER, 2019.

.....

C. KARIUKI

JUDGE