



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO.2 OF 2016

HAMED ABDULLAHI HAMED.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No.85 of 2016 of the Senior Principal Magistrate's Court at Isiolo by Hon. R.G Mundia – Resident Magistrate)

JUDGMENT

The appellant, **HAMED ABDULLAHI HAMED**, was convicted on own plea of guilty for the offence of promotion of trafficking in persons contrary to section 5(d) of the Counter Trafficking in Persons Act No.8 of 2010.

The particulars of the offence were that on 6th February 2016, in Maua Township of Meru County, he promoted the trafficking of fifteen Somali nationals by receiving them and facilitating their transport using motor vehicle registration number KCF 706 C, Mitsubishi Fuso from Modogashe to Maua where they were arrested en route to Nairobi.

The appellant was sentenced to pay a fine of twenty million or in default to serve twenty years imprisonment. He now appeals against both conviction and sentence.

The appellant was represented by Mr. Ndubi, learned counsel. Four grounds of appeal were raised as follows:

1. That the learned trial magistrate erred in law and in fact by not informing him of the consequences of pleading guilty.
2. That the learned trial magistrate erred in law and in fact by convicting the appellant on a plea that was equivocal.
3. That the learned trial magistrate erred in law and in fact by entering a plea of guilty on the basis of mere assumption.
4. That the learned trial magistrate erred in law and in fact by using a language the appellant did not understand in the proceedings.

The state opposed the appeal through Mr. Namiti, the learned counsel.

Looking at the grounds of appeal, there are only two issues. One, whether the plea was unequivocal or not and two, whether the plea was taken in a language the appellant understood. I will start with the issue of language.

When the plea was taken on 8th February 2016, there were a Borana interpreter and a Somali interpreter. The appellant was charged with two others and the plea was taken at the same time for all of them. Had the same been taken separately, then the appellant could be justified to complain that he did not understand the language ascribed to him. Since this was not the case, I make a finding that the charge was read to him in a language he understood.

The appellant pleaded guilty to the charge. After the facts were read to him, he confirmed them to be true. This plea was unequivocal.

The consequences of pleading guilty to a charge are obvious as day follows night. The trial court has no business of cautioning any accused of the consequences. If the trial court cautions on the consequences, (s)he may be accused of trying to influence the accused not plead guilty. This may be interpreted as bias in favour of the accused. The accused is left to freely and consciously plead in whichever way he chooses. The only duty that the trial court must exercise with care is to ensure that the accused understands the charge he is responding to, and that his plea is unequivocal. This is why upon pleading guilty, the facts are read out and the accused asked to confirm if they are factually correct before a conviction is entered. In the instant case, this was observed.

Section 5(d) of the **Counter-Trafficking in Persons Act** provides as follows:

A person who—

(d) by any other means promotes trafficking in persons, commits an offence and is liable to imprisonment for a term of not less than twenty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life.

The learned trial magistrate meted the minimum sentence provided by the law. He cannot be faulted.

The upshot of the foregoing is that the appeal must fail. The same is dismissed and the appellant will serve the sentence meted out by the learned trial magistrate.

DATED at MERU this 27th day of April, 2017

KIARIE WAWERU KIARIE

JUDGE