



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAROK**

**CRIMINAL APPEAL NO 51/2017**

**[FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE NO. 1962 OF 2014  
OF THE CHIEF MAGISTRATE 'S COURT AT NAROK]**

**ISAAC LEKUSHON TARURU .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

1. The appellant has appealed against his conviction and sentence of 10 years imprisonment in respect of an offence of giving false information contrary to section 20 of the Prevention of Terrorism Act No. 30 of 2012.
2. The state has supported the conviction but has conceded that the sentence was manifestly excessive.
3. Before pleading guilty to the charge, the appellant was informed by the court on the penalty to be imposed in the event of pleading guilty. The court went further and explained the charge and particulars of the offence in Swahili language. He then responded by stating '*It was true*'. The court then entered a plea of guilty.
4. The prosecutor then outlined the facts constituting the offence. The major facts were as follows:
  1. The OCS Narok Police station C. I David Luganji received an intelligence alert from the National Intelligence Service that a member of the militant Alshaabab had been spotted roaming in Narok town. This was on 27/10/2014. The OCS in response deployed 5 armed police officers in response to the alert. They then went to Hass Petrol station where the appellant was identified and arrested. PC Okoth Collins interrogated him. The appellant then told PC Okoth that they had been recruited by some Somali men and taken to a mosque in Mombasa and trained.
  2. He further told PC Okoth that there were a number of recruits in Narok who were ready to strike and was ready to identify them. As a result, he was taken to Nairobi to the Ant-Terrorism Police Unit (A.T.P.U). Following interrogation by the ATPU officers, he denied any knowledge of Alshaabab membership. He also denied revealing his membership to PC Okoth. Thereafter, he was returned to Narok police station.
  3. At a later date, he was taken to Mathare Mental Hospital in Nairobi and was found mentally fit to stand trial.
  4. In answer to that statement of facts, the appellant stated that the facts were true. He was then

convicted on his own plea of guilty.

5. In sentencing the appellant, the trial court took into account that he had pleaded guilty and that he was a first offender. The court further took into account that the appellant had given false information to the police who had to use public resources to investigate the report given to them by the appellant. It also took into account that the issue of terrorism was a matter that was affecting national security. He then imposed a sentence of 10 years imprisonment to discourage those who might give false information to the police.

6. I have considered all those factors and I find that the plea of guilty of the appellant was unequivocal. I also find that this appellant had been remanded in Mathare Mental Hospital where he was examined and found fit to stand trial. Furthermore, I find that he has been in remand custody from 28/11/2014 to 22/01/2016 which is a period of slightly over 1 year.

7. The appellant has raised 6 grounds of appeal in his amended petition of appeal to this court. In ground 1, he has faulted the trial court for not ensuring that he was supplied with witness statements. This ground is without merit in view of his plea of guilty and conviction and it is hereby dismissed.

8. In ground 2, he has faulted the trial court for not taking into account the medical report concerning his mental status. In this regard the report of the doctor from Mathare Mental Hospital was that the appellant had no history of mental illness. In the circumstances, this ground of appeal lacks merit and is hereby dismissed.

9. In ground 3, he has faulted the trial court for allowing the investigating officer to testify in court. This ground lacks merit and is hereby dismissed. In ground 4 and 5, the appellant has faulted the trial court for failing to find that the investigating officer fabricated the case against him. In view of his own plea of guilty, I find that these 2 grounds are lacking in merit and are hereby dismissed.

10. Finally in ground 6, he has faulted the trial court for not enforcing and respecting his rights to a fair trial. I find that the appellant was explained the consequences of pleading guilty in terms of the sentence to be imposed. I do not therefore find any breach of his rights to a fair trial.

11. This is a first appeal court. As a first appeal court according to *Okeno v. R (1972) EA 32*, I am required to scrutinize the evidence upon which the appellant was convicted and sentenced. I have done so.

12. In the light of the foregoing consideration, I hereby confirm the conviction of the appellant after taking into account his mitigation, the circumstances of the offence and in the light of the fact that the maximum penalty provided is 20 years. I find that the sentence imposed was manifestly excessive. In the circumstances, I reduce the sentence to 5 years imprisonment.

Judgement delivered this 29<sup>th</sup> day of June, 2017 in the presence of the Appellant and Ms Nyaroita for State.

**J. M. Bwonwonga**

**Judge**

**29/6/2017**