

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL REVISION NO. 4 OF 2017

ABDULLAHI ARAYE WEHELIYE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant Abdullahi Araye Weheliye was charged in the Chief Magistrate's court at Garissa together with 4 others with being unlawfully present in Kenya contrary to Section 53(1) (j) as read with Section 53 (2) of the Kenya Citizenship and Immigration Act. The particulars of the offence were that on 18th September, 2017 at Dagahaley area in Dadaab Sub-county within Garissa County being Somali national was found unlawfully present in Kenya.
2. They were all recorded as having pleaded guilty to the charge, were convicted of the offence, and each fined Kshs.200,000/= and in default to serve one (1) year imprisonment. The court also ordered that on payment of the fine or completion of the prison term, they be returned back to Somalia.
3. The applicant has now come to this court, not through an appeal, but a letter dated 30th August (September, 2017) stating that though he pleaded guilty to the charge, he was a child and should have been treated in accordance with Section 191 of the Children Act, in sentencing.
4. According to him, he should not have been imprisoned with adults. He thus asks this court to review the sentence.
5. When the matter was placed before me on 5/10/2017, I ordered for medical age assessment of the applicant, and on 24/10/2017 the Garissa G.K Prison Officers filed a document headed "DENTAL AGE ASSESSMENT" in which the applicant was assessed on 23/10/2017 to be approximately 17 years of age.
6. Having perused and considered the documents in the file, the age assessment form and heard and seen the applicant in open court, in my view this is not a matter where this court should exercise its criminal review jurisdiction under Section 362 of the Criminal Procedure Code (Cap.75).
7. Though this court has in the recent past been bending backwards to assist minors in similar situations, the age assessment report herein, as it is, does not assist this court in making a sensible decision on the age of the applicant.
8. The age assessment report does not indicate how the process of determining the age of the applicant was done. Secondly, it was signed by a person who did not indicate his name and qualifications and whether he had the necessary skills to assess the age of the applicant. It is important also to note that it is not easy for a court to visually determine the age of a person whose age is borderline, that is slightly below or slightly above 18.
9. Consequently, I dismiss the request for review of the sentence. If the applicant wants to appeal the decision of the Magistrate's Court, this decision does not bar him from doing so, and he can do so. The request for revision of sentence is otherwise disallowed.
10. These are the orders of the court.

Dated and delivered at Garissa on 24th November, 2017.

George Dulu

JUDGE