



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. 19 OF 2016

KUMZA TADESA..... APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

This is an appeal by **Kumza Tadesa** against his conviction and sentence by Resident Magistrate, Moyale. The appellant faced two charges in the trial court, namely - making use of an identity card and belonging to another person contrary to **Section 14 (f) of the Registration of Persons Act Cap. 107 of the Laws of Kenya**. Accused was allegedly found in possession of an Identity Card belonging to **Liban Korsi Jirwa** on 5/1/2016 at Odda Public Barrier in Moyale, Marsabit County.

Secondly, he faced a charge of entering Kenya without a valid permit contrary to **Section 52 (1) (j) (2) of the Kenya Citizenship and Immigration Act No. 12 of 2011**. He pleaded guilty and upon conviction was fined KShs.30,000/= in default 6 months imprisonment on each count. Sentences were ordered to run concurrently.

An appeal has been preferred to this court on grounds that the language of the court was not specified; that the plea was unequivocal; that the facts did not disclose a criminal offence and that the order of repatriation is harsh and against the rights of an asylum seeker.

The State did not oppose the appeal. Though Counsel for the appellant told the court that that the appellant has already served sentence and is only challenging the deportation order, this court must consider the plea that the appellant took at the trial court in order to arrive at a fair determination.

First of all, it is clear from the record that there was interpretation from English to Ahmaric. I believe the accused understood the language of the court. Because even after he was convicted, he mitigated as follows:

“I have children in Ethiopia. I was on a mission to secure work so as I can earn a livelihood. I am sorry. I do pray for forgiveness.”

The appellant addressed the court which is evident that he understood the language of the court and the proceedings before him.

One of the charges that the accused faced was possession of a Kenyan National Identity Card, a very serious offence indeed. If the appellant was an asylum seeker as he now contends, what was he doing with a Kenyan Identity Card? If he was an asylum seeker, he had the duty to report at the 1st Office of the United Nations High Commission for Refugees at the border (UNHCR) that he was seeking asylum in

Kenya. Instead, he committed a very serious offence of obtaining a Kenyan ID Card.

Secondly, if indeed the appellant was an asylum seeker, he would have informed the court that fact in his mitigation. He never did. The first time the issue of asylum seeking is after his conviction.

The appellant has been in remand for a while now and there has been no contact with UNHCR that he is an asylum seeker. I find no truth in the appellant's contention that he is an asylum seeker. The idea of asylum seeking is an afterthought. I decline to quash the conviction, sentence and repatriation order. The appellant should be repatriated to his home country of Ethiopia as ordered by the trial court. Appeal is dismissed in its entirety.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF JULY, 2016.

R.P.V. WENDOH

JUDGE

26/7/2016

In the Presence of

Mr. Mulochi for Respondent

Mr. Kimathi Holding Brief for Mr. Kaumbi for Appellant

Ibrahim, Court Assistant

Present, Appellant