

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 111 OF 2015

ABSHIR ABDUQADIR HAG...APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the conviction and sentence in Wajir SPM Criminal Case No. 430 of 2015 – B. Rogocho RM)

JUDGMENT

The appellant was charged in the principal magistrates court at Wajir 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 No. 5 of 2011. The particulars of the offence were that on 24th October 2015 at around 2320 hours at Tarbaj road block along Wajir – Mandera road, within Tarbaj District being a Somali citizen was found being in Kenya illegally and without any valid permit.

He was recorded as pleading guilty to the charge. Thereafter the prosecutor said the facts were as per charge sheet, and the appellant said the facts were correct. He was thus convicted and sentenced to pay a fine of Kshs. 100,000/= and in default to serve 24 months imprisonment. The magistrate also made an order that he should thereafter be interrogated by the ATPU Wajir County before repatriation back to Somalia.

He has now come to this court on appeal against sentence. In his submissions he emphasized that he pleaded guilty and that he was a father of two daughters and had a sick old mother. He said that he was the bread winner and that the sentence was harsh and excessive.

Mr. Okemwa learned prosecution counsel urged the court to peruse the factors taken into account in sentencing the appellant. Counsel questioned the orders of the trial court which required the appellant to be interrogated by ATPU after serving sentence.

I have perused the record and in my view though the prosecutor took a short cut in stating that the facts were as per charge sheet, it is clear that the appellant understood the charge and the facts he was pleading to. He has not appealed against conviction. In my view the conviction was proper. I uphold the conviction.

On sentence, the appellant pleaded guilty to the charge. He had no previous record and asked for leniency. He did not waste the court's time. However in my view this is a serious offence. The maximum sentence for the offence is Kshs. 500,000/= in default 3 years imprisonment. He was sentenced to pay a fine of Kshs.100,000/= and in default to serve 24 months imprisonment, which in my view was not excessive. I will uphold the conviction and the sentence.

As for the order of the trial court for interrogation by ATPU Wajir before repatriation back to Somalia, I find that order not to be grounded on the law. The proper order would be for the appellant to be repatriated back to Somalia. I therefore set aside the order requiring the appellant to be interrogated by the ATPU Wajir County after serving sentence, and order that he be repatriated back to Somalia after serving the prison sentence or paying the fine.

It is so ordered.

Dated and delivered at Garissa this 18th day of August 2016

GEORGE DULU

JUDGE