



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 102 OF 2013

AHMED ABDI HUSSEIN..... APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the proceedings in Garissa Chief Magistrates court criminal case no. 1227 of 2010 – J. N. Onyiego PM)

RULING

When this matter came up in court before me on 1st December, 2014, the Learned Prosecuting Counsel Mr. Okemwa informed the court that the appellant had not been brought to court. Counsel informed the court that there appeared to have been another Criminal Appeal file No. 402/2010 in the High Court at Nairobi which had been heard and determined on the same case. Counsel was of the view that the appellant had filed two appeals in Nairobi, and one had been determined. Counsel also informed the court that there was a repatriation order issued by the trial court, which might have already been acted upon. Counsel thus asked this court to peruse the file and give directions or a ruling

I have perused the record. From the record, this matter commenced in the subordinate court at Garissa as Chief Magistrate’s Criminal Case No. 1227 of 2010. The police file was No. 216/571/10. The accused (now appellant) was charged with four counts, that is three counts of possession of a firearm contrary to section 89(1) of the Penal Code, and one count of being unlawfully present in Kenya contrary to Section 13(2) of (c) of the Immigration Act (Cap 172). He was recorded as having pleaded guilty to all charges. He was convicted and sentenced to serve 10 years imprisonment on each of count 1, 2, and 3. With regard to count 4, he was ordered to serve 3 months imprisonment and be repatriated to Somalia.

He appealed, and his appeal was Nairobi High Court Criminal Appeal No. 402 of 2010. At that time High Court Criminal Appeal was filed in Nairobi there was no High court judge at Garissa. There are two written communications from the Senior Principal Deputy Registrar of that Nairobi court dated 22nd March 2012 one headed “RESULT OF APPEAL” and other a letter headed “HCCRA-402 of 2010” on this appeal. The letter forwarded to the Principal Magistrate at Garissa the “RESULT OF APPEAL” whose contents are “**Appeal allowed. Conviction in count 1, count 2 and count 3 respectively quashed and the sentences therein set aside. The appellant having already served sentence in count 4 is ordered repatriated back to the republic of Somalia**” . This communication was signed by the same Senior Principal Deputy Registrar. It was indicated in the letter that the decision of the High Court in the criminal appeal was made at Nairobi on 22nd March, 2012, by Hon. Achode J.

The record herein however shows the existence of another Criminal Appeal in Nairobi filed by the same AHMED ABDI HUSSEIN as Nairobi High Court Criminal Appeal No. 326 of 2010. It appears to relate

to the same Garissa Chief Magistrates Criminal Case No. 1227 of 2010.

On 12th July 2013, vide a letter signed by the Presiding Judge of the High Court Criminal Division at Nairobi, the appeal file No. 326 of 2010 was forwarded to the Garissa High Court. That appears to be the reason why Garissa High Court Criminal Appeal No. 102 of 2013 the present appeal, came into being.

I note that the judgment or copy of the same in Nairobi High Court Criminal Appeal No. 402 of 2010 is not in the file. The appeal file in Garissa High Court Criminal Appeal file No. 102 of 2013, was also opened long after a decision had been made in the High Court at Nairobi on 22nd March, 2012 on the same matter of the appellant, as communicated by the Senior Principal deputy Registrar of the High Court criminal Division Nairobi above.

Why two appeal files were opened in Nairobi, that is High Court Criminal Appeal Nos. 402 of 2010 and No. 326 of 2010 is not known. Be that as it may, in my view, this court needs to get a copy of the decision or judgment signed and delivered by the Hon. Justice Achode in Nairobi High Court Criminal Appeal No. 402 of 2010, before deciding on how to proceed in the present criminal appeal in the High Court at Garissa. In that regard, I agree with the Prosecuting Counsel that there is need for further clarification in view of the absence of appellant in court and the absence of judgment in Nairobi High Court Criminal No. 402 of 2010.

As such I order as follows:-

1. The Deputy Registrar of this court will urgently call for a certified copy of the court judgment delivered in Nairobi High Court Criminal Appeal No. 402 of 2010 Ahmed Abdi Hussein Vs. Republic
2. Mention on 18th March, 2015 to confirm receipt of the said copy of judgment, and for further directions.

Dated at Garissa this 17th day of February, 2015

GEORGE DULU

JUDGE

In the presence of:

Mr. Okemwa for the state

Martin Court Clerk