



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CRIMINAL APPEAL NO.74 OF 2013**

Appeal from conviction and sentence by Resident Magistrate at Mwingi (I.W. Gichobi, RM) in Criminal Case No. 365 of 2013

ABDUHAB SHURA MOHAMED.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**JUDGEMENT**

Abduhab Shura Mohamed, the appellant, was charged jointly with Abdikizaq Aweyi Hassan and Ali Hassan Yadarow at Mwingi Principal Magistrate's Court Criminal Case No. 365 of 2013. The appellant was the 1<sup>st</sup> accused and had been charged with Abdirizaq Aweyi Hassan as 2<sup>nd</sup> accused and Ali Hassan Yaparow as the third accused in the lower court at Mwingi. The three were charged with failing to report entry to Kenya as Refugees contrary to section 11 (1) read with subsection (3) of the Refugees Act. It was alleged that on 26<sup>th</sup> June 2013 at Mwingi Road block along Mwingi-Thika Road within Mwingi Central District in Kitui County on board Motor Vehicle KBS 346D labeled Muhsin Bus were found having failed to report entry into Kenya as refugees.

The appellant faced the second count of unlawful possession of an identify card belonging to another person contrary to section 14 (1) of the Registration of Persons Act. It was alleged that on the same date and place as in Count 1 he was found in possession of Identity Card No. 23021753 belonging to Abdirashid Yussuf Abdinoor.

The charges were read to the appellant on 27<sup>th</sup> June 2013. He admitted both counts. The facts were read to him and again he admitted them. In mitigation he told the court that he was given the identity card subject matter of the charges in count two by someone in the bus whom he did not know.

In an appeal filed on 1<sup>st</sup> July 2013 the appellant now says the plea was not unequivocal and that the trial magistrate failed to take into his age; failed to establish if the appellant understood the proceedings; failed to consider that the appellant was a refugee and the sentence is excessive.

In brief submissions in support of the petition of appeal Mr. Nzili for the appellant stated that the appellant was a refugee at the time of his arrest, conviction and sentence and that the trial court did not consider his rights under Section 16 of the Refugee Act and was harsh in ordering repatriation contrary to section 18 of the same Act.

The respondent submitted that the sentence is not excessive and that the appellant was properly convicted and sentenced.

I have considered this matter. I find the plea unequivocal. The appellant understood the charges and admitted the facts after these were read out to him. He also mitigated to the fact that the identity card was given to him in the bus he was travelling in.

This court will however intervene and quash the conviction, set the sentence aside and substitute it with conditional discharge in each count that in the next twelve months they do not commit any crime. I further order that the appellant be set free from custody unless for any other reason he is held in custody

and that he be handed over to the UNCHR to determine his refugee status. This order shall be implemented by the Officer in Charge of Garissa Police Station. I so order.

**Dated, signed and delivered this 17<sup>th</sup> day of December 2013.**

**S.N.MUTUKU**

**JUDGE**