

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 399 & 402 OF 2010

AHMED ABDI HUSSEIN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The appellant was convicted on his own plea of guilty on four counts. In **count 1, count 2 and count 3** respectively he was convicted under **Section 89(1)** of the **Penal Code** for being in possession of firearm wherein it was stated that he was found in possession of one AK 47 rifle, 99 (ninety nine) rounds of ammunition and a hand grenade in circumstances which raised reasonable presumption that the said items were intended to be used in manner that was prejudicial to public order.
2. In count number 4, he was convicted under **Section 13(2) (c)** of **Cap 172 Laws of Kenya** (The immigration Act), for being unlawfully present in Kenya without a valid entry permit while being a Somali National.
3. He has applied to court for the review of his sentence stating that indeed he was found in possession of the items in **count 1, count 2 and count 3** respectively, but that on **count 4**, he was not aware that he had crossed into Kenyan Territory at the time of arrest there being no mark at the border.
4. Learned state counsel Miss Lewa appearing for the State conceded the appeal on grounds that the prosecution's failure to produce the exhibits in **count 1, count 2 and count 3** was fatal to its case. The court should not have concluded that the stated exhibits were firearms without their being produced in court.
5. In her view therefore, the appellant's plea in **count 1, count 2 and count 3** respectively was not unequivocal and the conviction on each of those counts cannot stand.
6. In sum I note that the learned State Counsel conceded that the appellant's plea in **count 1, count 2 and count 3** was not unequivocal. The sentence imposed in **count number 4** was three months imprisonment and was lawful. The appellant having been in prison for a period approximating two years from 27th May 2010 when the sentence commenced. I am of the view that he has served sentence since the sentences in **count 1, count 2 and count 3** respectively have been conceded.
7. Reasons wherefore the appeal is allowed. The convictions in count **1, count 2 and count 3** respectively are 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.

SIGNED DATED and DELIVERED in open court this **22nd** day of **March 2012**.

L. A. ACHODE
JUDGE