



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 227 of 2012

HUSSEIN ABDILLAHI

YUSUF NOOR APPELLANTS

VERSUS

REPUBLICRESPONDENT

RULING

This is a Notice of Motion application brought under section 362(1), 364(1) 365 of the Criminal Procedure Act Article 33 of the 1951 Convention relating to status of refugees, Article 2(3) of the 1969 OAU Convention on specific Refugee problems in Africa, Article 2(6) of the Constitution.

It seeks orders for setting aside and or reversing the ruling by the Principal Magistrate's Court Taveta for the deportation and non-refoulement of the appellants back to their country of origin and order that the applicants be handed over to the Department of Refugees Affairs and admittance as refugees to Refugee Camps.

The grounds are that the appellants were charged with the offence of being unlawfully present in Kenya contrary to section 3(1) of the Immigration Act Cap 172 Laws of Kenya they pleaded guilty were Convicted, fined and an order for deportation issued.

It is the appellants contention that it was not proved that they were a danger to society as required under the 1951 OAU Convention on the principal of non-refoulement to warrant deportation.

Secondly that they were not subjected to refugee status determination before the decision to deport them.

Mr. Jami for the state has given an exposition of the refugee Act and has rightly invited this Court to invoke the provisions of section 358 of the Criminal Procedure Code which gives this Court the power to take further evidence. This is after conceding to the fact that before the deportation orders were made the applicants were not subjected to refugee status determination.

Section 7 of the Refugees Act No. 13 of 2006 provides for the establishment of a Commissioner for Refugees whose functions among others are to receive and process applications for refugee status. I am in agreement with Mr. Jami for the state that the Court itself cannot confer refugee status on an applicant without the input by way of processing by the Commissioner of Refugees.

I do therefore invoke the provisions of section 358(1) of the Criminal Procedure Code and order for a report from the Commissioner of Refugees on the applicants admissibility as refugees.

The **deportation** order is stayed pending the report on 7th February, 2013.

Ruling read and dated this **7th** day of **December, 2012**.

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M. MUYA
JUDGE

In the presence of:-

Miss Mwaura for the State

Court clerk – Musundi