



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL MISCL. APPLICATION NO. 95 OF 2011

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| | 1. | AHMED MOHAMED ALI |
| | 2. | FUAT OMAR OBO |
| 3. | MOHAMMED HUSSEIN | APPLICANTS |
| | 4. | ABDULLHAM FUAT |
| | 5. | MOHAMED AHMED SHEE |

=VERSUS=

REPUBLIC RESPONDENT

RULING

The five Applicants namely:

- (1) AHMED MOHAMED ALI
- (2) FUAT OMAR OBO
- (3) MOHAMED HUSSEIN
- (4) ABDULLHAM FUAT
- (5) MOHAMMED AHMED SHEE

had all been charged before the Lamu Senior Resident Magistrate’s Court with the offence of Being unlawfully present in Kenya contrary to Section 13(2) of the Immigration Act Cap 172, Laws of Kenya. All five Applicants are citizens of the Republic of Somalia. Upon completion of their trial various sentences were handed down to the Applicants and the trial magistrate finally ordered that upon completion of sentence or payment of fine the Applicants were to be repatriated back to their mother country which is Somalia through the relevant authorities. The Applicants have now come to High Court through their advocate **MR. KIRUI** seeking a review of this order of deportation. They plead that they are genuine asylum seekers who are running away from the turmoil in Somalia and ought not be repatriated. It is further argued that Applicant No. 4 is a minor and that all five are currently being held at Hindi Prison in Lamu awaiting deportation.

MR. MUTETI, learned State Counsel vehemently opposed this application and urged the court to uphold the deportation orders issued by the trial court. I have given due consideration to this application, the supporting affidavit of Mr. Kirui advocate as well as the annexures thereto. I have also considered the oral submissions made by learned counsel. Mr. Kirui has cited to this court the relevant UN conventions relating to **‘non-refoulement’** of asylum seekers. I am mindful of the provisions of these conventions and

I am also mindful of the fact that the same do bind Kenya as a Signatory State. The key word here is '*assylum-seeker*'. The conventions refer to persons who have come into this country with a view to seeking assylum. In my view the five applicants do not qualify as asylum seekers. As Mr. Muteti has pointed out if the Applicant's intention of coming to Kenya was to seek asylum they ought to have reported this fact at their first point of entry to an Immigration Officer. There is no evidence that this was done. Secondly even at the point of their arrest and charging in court, the Applicants made no claim that they were seeking asylum. They did not ask the court to contact the UNHCR on their behalf. This issue of seeking asylum only came up **after** the court had made an order for their deportation. It is clearly an afterthought. The Applicants having come illegally into the country are now belatedly trying to legitimize their continued stay in Kenya. I am not convinced of the merit of this application for review. I find no impropriety and/or illegality in the orders made by the learned Senior Resident Magistrate and I am not inclined to interfere with the same. The present application is disallowed and the deportation order made by the trial court is hereby upheld as good, valid and enforceable.

Dated and Delivered in Mombasa this 10th day of June 2011.

M. ODERO
JUDGE