



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**CRIMINAL REVISION CASE NO. 445 OF 2011**

**MARIAN GHAI MOHHAMED & 6 OTHERS.....APPLICANTS**

**VERSUS**

**REPUBLIC.....APPLICANT**

**COURT - ON REVISION**

I have under Section 362 of the Criminal Procedure Code called for and received the lower court record following a letter written to this court by Charles Kariuki & Company Advocates dated 25/10/2011.

The record does not in any way indicate that the accused persons save for Accused 5 were running away from persecution of any nature and neither did they express any fear over their lives. Search for food, treatment and employment does not in itself turn out to cover one as a Refugee.

However, given the situation prevailing in Somalia now, it's important that the Hon. Learned Magistrates dealing with this kind of persons appearing before them take extra care while taking their pleas. Let them state exactly what has brought them to Kenya. This will enable the court to determine whether it should refer the persons to the United High Commissions for Refugees (UNHCR) offices for determination of their Refugee status.

In their mitigation, the accused persons mentioned they were here for various reasons e.g. employment, treatment, education, food etc.

In mitigation Accused 5 said her husband is an Alshaabab. This was a point of consideration for she said she ran away because of that. Did the court establish this one? NO. If this allegation is true, then it would give her reason for fear. It is only officers at UNHCR offices or the Department of Refugees Affairs that can deal.

The issue of one of the accused being a child is neither here nor there. The Prisons department is always keen and cannot accept the commitment of a minor. There is no evidence that this alleged minor has been rejected by Prisons for being an under age. Counsel did not also give the name of the said minor.

Due to the prevailing circumstances in the Somalia and the fact that there is nothing on record to show that the Learned Magistrate made inquiries as to exactly why the accused persons came to Kenya, I find that the convictions are unsafe.

Under the provisions of Section 364(1) (a) of the Criminal Procedure Act I revise the order of the lower court by quashing the convictions and setting aside the sentences. The order for repatriation is also set aside.

They shall be set free forthwith and are given 14 days within which to present themselves to the UNHCR offices Nairobi, for their Refugee status determination.

**DATED AND SIGNED IN CHAMBERS AT EMBU THIS 4<sup>TH</sup> DAY OF NOVEMBER 2011.**

**H. I. ONG'UDI  
JUDGE**