



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU**

**Criminal Revision 58 of 2010**

**ABDI NOOR SAIDI.....1<sup>ST</sup> APPLICANT  
ABAI NOOR MOHAMMED.....2<sup>ND</sup> APPLICANT  
VERSUS  
REPUBLIC.....RESPONDENT**

**1<sup>st</sup> February, 2010**

**Coram: Anyara Emukule - Judge  
Court clerk - Kosgei  
In Chambers**

**RE: Application for Revision under Section 362 & 364 - Criminal Procedure Code, Cap. 75,  
Laws of Kenya - Nakuru CMCr.C No. 436 of 2010 Republic vs. Abdi Noor Saidi & 2  
Others**

**COURT ORDER**

The Applicants Abdi Noor Saidi and Abai Noor Mohamed were charged and convicted of the offence of being unlawfully present in Kenya contrary to **Section 25(a)** of the **Refugees Act 2006 (No. 13 of 2006)**.

According to the letter dated 26<sup>th</sup> January 2010 by the firm of G. C. Nyongesa & Co. Advocates, of Hyrax Building Ground Floor, Nakuru, the Appellant is a refugee and was arrested in a bus travelling to the U.N.H.C.R. Office in Kakuma - Turkana District. Counsel says that the Applicants had left their documents at the U.N.C.H.R. Office at Kakuma and had gone to the U.N.H.C.R. Head Office to pick some documents.

Under the provisions of **Section 13** of the **Refugees Act**, no proceedings shall be instituted against any person or any member of his family in respect of his unlawful presence within Kenya -

**(a) if such a person has made a bona fide application under section 11 for recognition as a refugee, until a decision has been made on the application and, where appropriate, such person has had an opportunity to exhaust his right of appeal under that section; or**

**(b) if such person has become a refugee.**

If the instructions of Counsel for the Applicants are true, the Applicants being refugees in Kenya are not liable to be prosecuted in respect of his unlawful presence within Kenya. This being so, the prosecution of the Applicants under **Section 25(a)** was unlawful.

In view of the powers vested in this court by **Section 364(1) and 354(3)(i)** of the **Criminal Procedure Code, (Cap. 75 Laws of Kenya)**, I quash the conviction of the Applicants, and direct that the Applicants be handed over to the U.N.H.C.R. for repatriation to the U.N.C.H.R. Refugee Camp at Kakuma.

**Dated at Nakuru this 1<sup>st</sup> day of February 2010**

**M. J. ANYARA EMUKULE  
JUDGE**