

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Appeal 138 of 2008

(Arising from CM CR. Case No. 1377 of 2008 of the Chief Magistrate's court at Mombasa)

MOHAMED FATAHAPPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

On the 13th day of May 2008, Mohamed Fatah, Halima Farah, Farhio Omar, Malim Aden, Diegoh Osman, Aisha Mohamed, Nashroh Abdulrahman, Muna Abdia, Hadhan Mohamed Juma, Bakole Ali and Fatuma Ismael, hereinafter referred to as the applicants, appeared before the Chief Magistrate's court, Mombasa whereupon each pleaded guilty to a charge of being in Kenya unlawfully contrary to section 15(2)(c) of the Immigration Act. They were convicted and were ordered to be repatriated to Somalia. Being dissatisfied with that decision they filed this appeal before this court.

The subject matter of this ruling is the Notice of Motion dated 20th May 2008. In that motion Mohamed Fatah, the applicant herein is seeking for an order to suspend the execution of the order pending appeal. He also prayed for an order to commit the applicant to an asylum centre within the Coast Province pending the hearing and determination of this application.

I have perused the application plus the supporting affidavit sworn by Mrs. Christine Kipsang, learned advocate for the applicant;

I am convinced the Notice of Motion is urgent and that it is necessary for temporary orders of stay to be given to avoid the application and the appeal being rendered nugatory. I allow prayer (b) of the motion by staying the repatriation order for 14 days. I also direct that the applicant be committed to an asylum centre within Coast Province of any anywhere within Kenya pending the hearing and determination of this motion.

The motion is fixed for inter partes hearing on 28.5.2008. Let the application be served upon the Attorney General's office with a Hearing Notice.

This orders shall apply to replication in Mombasa H.C. Crim. Appeals No. 139 – 148 of 2008.

Dated and delivered at Mombasa this 22nd day of May 2008.

J. K. SERGON

J U D G E