

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Appeal 160 of 2007

(From Original Conviction and Sentence in Criminal Case No. 1067 of 2007

of the Chief Magistrate's Court at Mombasa: B.N. OLAO (C.M.)

MOHAMED AYUB SHEIKH

Alias MOHMED AYUB HAJI MOHAMED SHAFFI :::::::::: APPELLANT

VERSUS

REPUBLIC :::::::::: RESPONDENT

JUDGMENT

MOHAMED AYUB SHEIKH alias **MOHAMED AYUB HAJI MOHAMED SHAFFI** was upon his own plea of guilty convicted on four counts of unlawfully engaging in business contrary to Section 13(2) of the Immigration Act, being unlawfully present in Kenya contrary to section 13(2) (c) of the Immigration Act, failure to register as an alien contrary to regulation 4(1) of the Aliens Registration Order as read with Section 3(3) of the Alien Registration Act Cap 173 of the Laws of Kenya and having been removed from Kenya in consequence of an order made under Section 8 was found in Kenya while that order is still in force contrary to section 13(1)(g) of the Immigration Act, Cap 172 of the Laws of Kenya. He was sentenced to Sh.10,000/- fine on each of counts 1, 2 and 4 in default two months imprisonment and Sh.5000/- fine on count 3 and in default one months imprisonment. The sentences were ordered to run consequently if the fines were not paid. He has appealed against those convictions and sentences.

The record shows that when the Appellant first appeared before the Chief Magistrate on 27th March 2007 there was interpretation from Ulgu to English and he pleaded not guilty to all the charges. However when he changed his plea on 27th April 2007 the Interpretation was from English to Kiswahili. The interpretation was therefore not into the language the Appellant understood. That violated the Appellants right under section 77(2)(b) of the Constitution which requires that an accused person shall be informed in the language he understands in detail the nature of the offence with which he is charged. Moreover after the facts were read out it is the Appellant's advocate who said they were true. It cannot therefore be assumed that the Appellant understood the proceedings.

For these reasons I agree with the learned State Counsel Mr. Monda that the plea was not unequivocal. I therefore allow this appeal, quash the conviction and set aside the sentence. The fine paid by the accused shall be refunded to him forthwith.

The Appellant being a foreigner the trial magistrate's order of deportation stands.

DATED and delivered this 18th day of December 2007.

D.K. MARAGA

JUDGE