

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPLICATION NO. 18 OF 2002

(CRIMINAL APPEAL NO. 198'B' OF 2001)

(From Original Conviction and Sentence in Criminal Case No.4864 of 2001

of the Resident Magistrate's Court at Mombasa –K. Muneeni –R.M.)

ABDULRAHMAN HANDI ALIAS HATIM HAJI APPELLANT

- VERSUS -

REPUBLIC RESPONDENT

R U L I N G

The Applicant seeks to be admitted to Bail pending his appeal and also for leave to file an appeal out of time. He had been charged with the offence of being unlawfully present in Kenya contrary to Section 13(2)© of the Immigration Act Cap 172. The delay in filing of the appeal as stated by his Counsel was due to the fact that non of his family members became aware of his arrest, charge and conviction until a message was send to them from the Shimo-la-Tewa prison. His Counsel submitted that the plea was non unequivocal since facts of the offence were never read to the Applicant.

Further no evidence was adduced to show he was indeed of Arab origin from Saudi Arabia.

In further submissions he says the applicant suffers from a mental disorder and prior to his arrest was undergoing treatment at the Port Reitz hospital. IN support and annexed to the Affidavit are the said treatment notes as well as copies of his birth certificate and National Identity card.

The State Counsel aid not oppose the application and pointed out that indeed the court had no jurisdiction to order for his extra diction.

I have, read the proceedings and judgement and in light of the application before me, I am in agreement with both Counsels Submissions that the plea was not unequivocal, the facts were not read out to the applicant and the court had no jurisdiction to order for an extradition. Had the appeal been admitted, I would have allowed it. However in the circumstances I do grant the leave as sought and release the applicant on Bond of Kshs.20,000/= and I surety of a similar amount pending Appeal. Appeal to be filed within 14 days.

Dated and Delivered at Mombasa this 1st day of February, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE