



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO.233 OF 2002**

From Original Conviction (s) and Sentence (s) in Criminal Case

No.338 of 2002 of the Chief Magistrate's Court at Nairobi

**MOHAMED ALI SEMPALA..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING**

The Appellant filed an Appeal challenging the conviction and sentence meted against him by Mr. Olao the Chief Magistrate Magistrate Nairobi on 8th February 2002 in Criminal case No.338/2002 where he was sentenced to pay a fine of 20,000/= for each of the three courts he was charged with and my default to serve 6 months imprisonment for each count. In another the accused was to be represented to his lawyer of origin. Mr. Etoli quoted five grounds of appeal but relied on ground two and five. According to Mr. Etoli the Accused is not fit to plead as per the medical report of Doctor which he produced in court. He has argued that this is the main reason why the accused admitted he was a South African yet he is a Ugandan according to a passport which Mr. Etoli produced. He argues that the order of repatriation cannot be effected as the accused is not a South African.

The state counsel suggested that the case should go for a retrial because the trial court was not informed of this accused medical status during the trial.

I have considered this appeal carefully that the accused appeared in person and may have been of unsound mind as the medical report shows it was impossible to rely on him to disclose that he is of unsound mind. Consequently it was impossible for the court to note his mental status until during this Appeal. If the accused was calm during the case there was no way the court would have known his mental status. Now that his mental status is known coupled with the fact that he is a Ugandan and not even a South African as earlier admitted then there is no doubt in mind that the plea of guilty was based on wrong facts it was not therefore unequivocal. I am in agreement with Mr. Etoli that the plea of guilty cannot be allowed to stand. I therefore set aside the sentence and quash the conviction. Since the accused is a Ugandan I ask that he be repatriated to Uganda by the Emigrations Emigrants only. Order accordingly.

**R.M. MUTITU**

**JUDGE**

**28/3/2002**

**Delivered in open court in the presence of Nyamogo Oduor for the state and Mr. Etoli for Appellant.**

**R.M. MUTITU**

**JUDGE**