



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

CRIMINAL APPLICATION NO. 884 OF 2002
CONSOLIDATED WITH CRIMINAL APPLICATION NO. 883 OF 2002
(In the matter of an intended appeal between)

ABUDAR ABDIBARO HASSAN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

These two applications are consolidated for the purpose of this ruling. Both applicants are Iraq Nationals who were convicted of several offences under the immigration Act Cap 172 and the Aliens Restriction Act Cap 173 Laws of Kenya.

The record shows that they pleaded guilty to the charges after which they were ordered to pay fines in default to serve terms of imprisonment. They were also ordered to be repatriated to their county of origin.

They were aggrieved by the repatriation order and intend to appeal against the order. There are now these applications for leave to appeal out of time.

The order against the applicant in misc. Cr. Application no. 883 of 2002 was made on 3rd April, 2002 and so he was supposed to file his appeal within fourteen days from that date. The order against the applicant in MISC CR. Application No. 884 of 2002 was made on 19th September, 2002. He was equally required to appeal within fourteen days from that date. Both these applications were filed on 3rd October, 2002.

The court may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court thereof. (See section 349 C.P.C).

In respect of Misc CR. APPN NO. 883 of 2002, there is no evidence that the applicant or his counsel applied for any proceedings. Whatever the case, the application for leave was filed exactly six months after the order complained of. There is evidence that, as regards Misc. CR APPN, NO. 884 of 2002, the learned counsel for the applicant applied for proceedings on 13th August, 2002. By a letter dated 9th September, 2002 by the Chief Executive Officer by the court, he was notified of the availability of the said proceedings. As the order complained of was made on 19th September, 2001, the proceedings were being applied for eleven months thereafter.

There is no explanation for the delay of six and eleven months respectively in respect of the two applications and with respect, I see no good cause to that the leave sought.

A submission has been made by the learned counsel for the applicants that applications for leave can be made at anytime where the order complained of was made without jurisdiction. I am not aware of any authority for such a submission and if nay exists the learned. Counsel was bound to produce the same but did not.

Be that as it may, in the proceedings relating to Misc, Cr. Appn No. 883 of 2002, the learned counsel for the applicants is recorded as having asked the learned trial magistrate to make an order of repatriation. (See page 5 of proceedings). He cannot, with respect now say the order was without jurisdiction when he asked for the same.

The end result is that these applications lack merit and are accordingly dismissed.

Orders accordingly.

Dated and delivered at Nairobi this 29th day October, 2002.

MBOGHOLI MSAGHA

JUDGE