



**Republic v Kabughu (Criminal Revision E069 of 2025)
[2025] KEHC 5954 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL REVISION E069 OF 2025**

JN ONYIEGO, J

MAY 13, 2025

BETWEEN

REPUBLIC APPLICANT

AND

MUSA SHABAN KABUGHU RESPONDENT

RULING

1. The respondent herein was charged with the offence of being a member of a terrorist group contrary to Section 24 of the *Prevention of Terrorism Act* 2012. Particulars of the offence were that on 12th August, 2015 at Garissa Police Station within Garissa County, he was found to have been recruited to join the Al-shabaab militia, an outlawed terrorist group, and openly confessed to have been recruited as a member of the said terrorist group.
2. Having denied the offence, the matter proceeded to full trial. He was however convicted and sentenced to 15 years imprisonment. Aggrieved by both the conviction and sentence, he appealed to the High Court which dismissed the appeal. Undeterred, he moved to the Court of Appeal which also dismissed the appeal on 24/7/2020.
3. Subsequently, the prosecution realized that the trial court did not in its sentence make an order for repatriation to his home country upon completion of his sentence.
4. Consequently, vide a letter dated 14.4.23, addressed to Chief Magistrate Garissa law Courts, the office of the DPP sought the court to make an order for repatriation. However, the Chief Magistrate observed that he had no jurisdiction to make the orders sought. He subsequently referred the file to this court for review of sentence.
5. I have perused the record of the lower court file as well as the sentence meted out. It is true that there was no order directing that upon serving the sentence accused/respondent be repatriated to his home country which is Tanzania.



6. This court has been moved to exercise its revisionary powers pursuant to Article 165 (6) & (7) of the Constitution which provides;

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

7. Equally, Section 362 of the CPC does reinforce the above constitutional provision by stating that;

“362. Power of High Court to call for records-

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

8. Indeed, by imposing a sentence of 15 years without directing the accused to be repatriated upon completion of sentence was an omission which this court upon exercise of its inherent powers of supervision can correct. To that extent, the sentence of 15 years imposed by the trial court is hereby revised to include an order that, upon completion of the said sentence, the respondent (accused) shall be repatriated back to his home country through the Immigration office in conjunction with the OCS Garissa police station.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 13TH DAY OF MAY, 2025.

J. N. ONYIEGO

JUDGE

