



Guhad v Republic (Miscellaneous Criminal Application E006 of 2020) [2024] KEHC 2598 (KLR) (8 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2598 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E006 OF 2020**

JN ONYIEGO, J

MARCH 8, 2024

BETWEEN

ADAN ABDI GUHAD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was together others arraigned before Mandera PM’s court charged with three counts. Count one, he was charged with Entering Kenya through a place not designated as place of entry contrary to Section 15 (2)(a) of the *citizenship and immigration regulations*, 2012 as read with section 60 of the *Kenya Citizenship and Immigration Act* No. 12 of 2011. Particulars were that on 04.01.2020 at around 0800hrs at Ngozi area along Kenya – Somali Border at Mandera East Sub County of the Republic of Kenya he entered Kenya from Bulla Hawa – Somalia through the said place, a place not designated as a place of entry.
2. Count two, he was charged with failing to report entry to the Immigration Office contrary to regulation 16(1)(a) and Regulation 16(6) of the *Immigration Regulations*, 2012 as read with section 60 of the *Kenya Citizenship and Immigration Act* No. 12 of 2011. The particulars were that on or before 04.01.2020 at Border Ngozi area along Kenya – Somali Border at Mandera East Sub County within Mandera County of the Republic of Kenya he failed to report entry to the nearest immigration officer as required by the law.
3. Count IV, he was charged for being unlawfully present in Kenya c/sec 53(1) (j) as read with section 53(2) of the *Kenya Citizenship and Immigration Act* No. 12 of 2011. The particulars were that on 05.01.2020 at around 1700hrs at Omar Jilo in Lafey sub-County within Mandera County being a Somali national was found unlawfully present in Kenya without valid passport or permit authorizing you to stay in Kenya.



4. Having pleaded guilty to the charge, he was sentenced to pay a fine of Kes. 800,000/- for each of count one and two in default to serve three years' imprisonment. On Count IV e was ordered to pay a fine of Kes. 200,000/- and in default, to serve two years' imprisonment. Sentences to run consecutively.
5. The applicant has approached this court seeking for leniency and reconsideration of his sentence.
6. At the hearing of the application, the applicant urged that this court considers reviewing his sentence since he has been in custody while his co- accused has been released. Mr. Kihara for the respondent did not object to the same.
7. I have considered the application herein and the oral submissions by the applicant. The main issue for determination is whether the sentence meted out by the trial court was excessive in the given circumstances.
8. It is not lost to this court that the offences herein were committed in one transaction and therefore the question is whether the trial court acted on a wrong principle in sentencing the applicant by ordering sentences to run consecutively.
9. Section 14 of the *Criminal Procedure Code* provides as follows: -
 1. Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefore which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.
10. In *Peter Mbugua Kabui v Republic* [2016] eKLR the Court of Appeal stated as follows:

“As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment.
11. In the same breadth, *Sentencing Policy Guidelines* provide as follows: -

“7. 13 – Where the offence emanates from a single transaction the sentences should run concurrently. However, where the offences are committed in the course of multiple transactions and where there are multiple victims the sentences should run consecutively”.
12. The applicant has been in prison from the time of arrest and this court is of the view that the period already served by the applicant of three years and six months is more than adequate considering that sentences for the offences committed herein ought to have ran concurrently.
13. For the reasons above stated, the application herein is allowed and the applicant released unless otherwise lawfully held. Upon his release, he shall be deported back to his country of origin as initially directed by the trial court.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT GARISSA THIS 8TH DAY OF MARCH 2024

J. N. ONYIEGO



JUDGE

