



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL APPEAL NO. 28, 29 AND 30 OF 2019 (CONSOLIDATED)

KASEREKA KANYAMA ADOLPHE.....1ST APPELLANT

ABDU RASHID SSEKAJIGO.....2ND APPELLANT

SHADRACK JACOB.....3RD APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the sentence in Mandera Principal Magistrate's Court

Criminal Case No. 298 of 2019 delivered by Hon. P. N. Areri – SPM on 6/8/2019)

JUDGEMENT

1. This matter consolidated under HCRA No. 30 of 2019 arose from Criminal Case No. 298 of 2019 Mandera in which the 3 appellants were charged, convicted and sentenced on Count II for failing to report entry into Kenya contrary to section 16(1) (a) of the Kenyan Citizenship and Immigration Regulations, 2012 as read with section 60 of the Kenyan Citizenship and Immigration Act No. 12 of 2011 and on Count III being unlawful present in Kenya contrary to section 53(1) (j) as read with section 53(2) of the Kenyan Citizenship Act No. 12 of 2011 whereby they were convicted and sentenced to a fine of Kshs.500,000/= in default serve 3 years imprisonment in Count II and then Count III fine of Kshs.300,000/= in default serve 2 years imprisonment and the sentences to run consecutively and thereafter be repatriated. This was on 6/8/2019.

2. Each one of them filed separate grounds of appeal as set out at the beginning under Nos. 28, 29 and 30 of 2019.

3. During the hearing the appellants abandoned their appeals on conviction and proceeded to challenge the sentence though they laid much emphasis on their mitigations.

4. Appellant No. 1 in HCCRA No. 28 told court that he was convicted on 6/8/2019 after having been in custody since 8/7/2019 (30 days). He has been in custody for about one year now.

5. He claims to be 20 years of age and had come to Kenya from Democratic Republic of Congo (DRC) as he ran away from the outbreak of Ebola which was killing people in mass in their home country.

6. He seeks the court to decree that the period served is enough and be repatriated to his home country. He urges court to reduce sentence.

7. ABDU RASHID SSEKAJIGO in HCCRA No. 29 of 2019 said that he is 25 years of age and ran from Uganda due to the Ebola outbreak in the home area. He came to seek employment in Kenya. He seeks to be released and ordered repatriated.

8. SHADRACK JACOB says that he is 18 years of age but when he was convicted, he was a minor aged 17 years. He came from DRC Congo escaping from the Ebola outbreak. He also seeks to be released and repatriated.

9. The law under which they are charged states that:

“-On count II, if one is convicted under Rule 16 (1) of Kenyan Citizenship and Immigration Act No. 12 of 2011, the penalty

under section 60 of the same Act is a fine of a maximum of Ksh. 1million or a sentence of maximum of 5years imprisonment or both.

-On count III, conviction under section 53(1) (j) of the same Act, the penalty under section 53 (2) of the Act is fine of a maximum of Ksh. 500,000/= or sentence of a maximum of 3 years imprisonment or both.”

10. There were no previous records and thus the Appellants were treated as first offenders.

11. In their mitigations they sought to be allowed to stay in Kenya or be repatriated. The court did not allude to the sentencing guidelines thus forgot to factor in the fact that they pleaded guilty; saving court's time thus their sentence ought to have had a measure of credit and be reduced accordingly.

12. I therefore make the following orders;

(i) on count 11 the fine is reduced to Ksh. 100,000/- or a sentence of 1year imprisonment.

(ii) On count II the fine is reduced to Ksh. 200,000/- or sentenced to 2 years imprisonment to run consecutively.

DELIVERED AND SIGNED AT GARISSA THIS 1ST DAY OF JULY, 2020.

.....

C. KARIUKI

JUDGE