

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 71 OF 2017

MOHAMED DINLE ABDILLE.....APPELLANT/ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

(From the conviction and sentence in Mandera Senior Resident Magistrate’s Court Criminal Case No. 172 of 2016 by P. N. Areri (SRM))

JUDGEMENT

1. The appellant was charged in the Magistrate’s Court at Mandera with being unlawfully present in Kenya contrary to section 53 (1) (j) and (2) of the Kenya Citizenship and Immigration Act of 2011. The particulars of the offence were that on 12th July 2016 at Mandera township in Mandera County in the Republic of Kenya being a Somali national was found unlawfully present in Kenya without a valid permit authorizing him to stay in Kenya.
2. He pleaded guilty to the charge and the prosecutor stated that facts were as per the charge sheet.
3. He was convicted and sentenced to a fine of Kshs.200,000 and in default to serve four (4) years imprisonment and in completion of the sentence to be repatriated to Somalia.
4. He filed his appeal in this court claiming that he was tortured and confused and could not understand the alleged offence. He said that he was a Kenyan by birth and a holder of Kenyan national identity card No. 35765846.
5. Before the appeal was heard, this court made an order on request of the State, that the National Registration Bureau and CID confirm the identity of the appellant, on whether he was a Kenyan.
6. A request was then sent to the Registrar of Persons Garissa by Michael Njeru (ASP) Sub-County Criminal Investigating Officer, to confirm if Mohamed Ismael Gedi was the registered owner of the identity card No. 35765846 and whether his fingerprints matched those in the identity card.
7. This report from the Registrar of Persons was not received.
8. On the hearing for the appeal, the Principal Prosecuting Counsel Mr. Okemwa stated that he had read the fingerprints of the appellant with the CID Officer and confirms that the fingerprints were for the same person, and informed the court that the name Abdille was a nickname. Counsel therefore submitted that it is clear that the appellant did not understand the charge as the prosecution took a shortcut by saying that the facts were as per charge sheet, which must have confused the appellant.
9. Since the State does not oppose the appeal, and the Prosecuting Counsel has confirmed to this court that the appellant had a Kenyan identity card and that the CID had confirmed that the fingerprints in the identity card are those of the appellant, I have no reason not to allow the appeal.
10. I thus allow the appeal, quash the conviction and set aside the sentence. I order that the appellant be released from custody unless otherwise lawfully held.

Dated, Signed and Delivered at Garissa this 4th May, 2018.

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GEORGE DULU

JUDGE