

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL REVISION NO. 61 OF 2018

ABDIFATAH FEISAL MOHAMUD.....APPLICANT/CONVICT

VERSUS

REPUBLIC.....PROSECUTOR

RULING

1. This matter has been brought to this court through a request by Abdifatah Feisal Mohamud for review of sentence. It is stated in the request for review filed on 28th September 2018 that he is a young boy who needs care. His age or estimated age was not stated.
2. In the trial court, he was charged with four counts. He was convicted on his own plea of guilty and sentenced. There is no indication that he was a young man. His identity card or purported identity card says that he was born in July 1993 which means that he is an adult.
3. Having said so, the Prosecuting Counsel Mr. Okemwa stated that I should consider the request for revision as the applicant merely requests review of sentence. Counsel thus stated that this court should not apply the provisions of section 364 of the Criminal Procedure Code. Counsel submits that in any case, this court had jurisdiction to call for the file and review the orders of the trial court.
4. Counsel submitted further that the charge of making a document without authority contrary to section 357 (a) of the Penal Code, might not have been established by the facts summarized by the prosecutor. Counsel left it to this court to determine the issue.
5. The convict filed written submissions in which he asked for mercy. He said he was coerced by older relatives to get involved in illegal entry to Kenya.
6. I have perused the record of the trial court, the convict was convicted of being unlawfully present in Kenya contrary to section 53 (1) (j) as read with section 53 (2) of the Kenya Citizenship and Immigration Act No. 12 of 2011. He was also convicted of personating contrary to section 382 of the Penal Code. Under Count 3 he was convicted of making a document without authority contrary to section 357 (a) of the Penal Code. Under Count 4 he was convicted for uttering a document with intent to deceive contrary to section 357 (b) of the Penal Code.
7. He pleaded guilty and the prosecutor summarized the facts, from which he was convicted and sentenced.
8. He has now brought the matter before this court on revision. If the convict did not claim in this court to be a young man, and the prosecutor did not ask this court not to apply the provisions of section 364 of the Criminal Code, I would have dismissed the request for revision. However, in view of the peculiar circumstances of this case, I will reluctantly exercise my discretionary powers under this court's revision jurisdiction.
9. Having said as above, I find nothing wrong with the conviction and sentence on Count 1, 2 and 4. I will uphold the convictions. The sentences are also within the law, and the offences being prevalent in this area where insecurity is a big challenge, in my view, the sentences are appropriate to send the right message to would be offenders.
10. With regard to Count 3, in my view, both the conviction and sentence was not proper. This is because in the summary of facts given by the prosecutor, he did not refer or mention anything to do with making a document without authority. In my view, the police investigators should have enquired about where and how this identity card was manufactured and if it was done by the convict, then the prosecutor should have included in his summary of facts a brief on when and where the convict manufactured the fake identity card. From the facts on record, the offence was not established and on that basis I quash the conviction for making a document without authority and set aside the sentence imposed. Otherwise, I uphold the conviction and sentence on Count 1, 2 and 4. The convict will still be repatriated to Somalia on release from prison.

Dated, and delivered at Garissa this 21st day of November, 2018.

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George Dulu

JUDGE