



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CRIMINAL REVISION NO. 64 OF 2018**

**MARIAM ALI OMAR.....1<sup>ST</sup> APPLICANT/CONVICT**

**ABDIRAHAMAN ALI SHARIFF.....2<sup>ND</sup> APPLICANT/CONVICT**

**FARAHAN MOHAMED ALI.....3<sup>RD</sup> APPLICANT/CONVICT**

**SHUKRI SAID OMAR.....4<sup>TH</sup> APPLICANT/CONVICT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. Before me is a Notice of Motion dated 2<sup>nd</sup> November 2018 filed on behalf of four (4) applicants, by Loice Ndindi Nganga advocate attached to the Refugee Consortium of Kenya. The Notice of Motion seeks the following substantive orders:-

**1. (Spent).**

**2. That this Honourable Court grants stay of the deportation orders granted by the Magistrate's Court on 24<sup>th</sup> October, 2018.**

**3. That the Honourable Court do order the applicants to be taken to Dadaab Refugee Camp and handed over to the Refugee Affairs Secretariat (RAS) for humanitarian assistance.**

2. The Notice of Motion is based on various grounds, the main ground being that the applicants are Somali nationals who due to security risks in their home country seek refugee status in Kenya.

3. This court granted interim stay of the deportation orders.

4. At the hearing of the application Ms. Nganga for the applicants made extensive submissions in support of the application and suggested that her clients may be taken to Kakuma Refugee Camp, for refugee status processing.

5. Mr. Okemwa for the State responded by stating that there existed an Executive Order against registration of refugees at Dadaab Refugee Camp, and that in any case – none of the applicants had shown any intention of seeking asylum status in Kenya before they were arrested and convicted for being unlawfully present in Kenya.

6. Though this appears to be a case deserving sympathy, in my view the application will not succeed. The issue of asylum seeking is primarily an administrative and not a legal matter for the courts. If the applicants had approached the administrative units in Kenya and were denied assistance as asylum seekers, then the court could intervene for them. No such assistance was sought however, thus this court cannot grant the orders sought.

7. Secondly, the applicants being convicts in Kenya cannot change the existing deportation orders issued by a competent court through seeking asylum. Since they have not appealed and said the deportation orders were illegal, those orders have to be implemented first, then if they want to seek asylum, they have to set the proper process in motion. By coming to this court straight, they are seeking to circumvent the operation of law, which this court will not accept.

8. I find no merits in the application and dismiss the same. Any interim orders granted by this court are hereby vacated.

**Dated and delivered at Garissa this 21<sup>st</sup> day of November, 2018.**

.....

**George Dulu**

**JUDGE**