

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL APPEAL NO. 63 OF 2015

ABDI JAMA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the conviction and sentence in Wajir Senior Principal Magistrate's Criminal Case No. 268 of 2015 – B. Rogoncho - RM)

JUDGMENT

The appellant was charged in the Subordinate Court with being unlawfully present in Kenya contrary to Section 53 (1) (3) as read with Section 53 (2) of the Kenya Citizenship and Immigration Act No. 12 of 2011. The particulars of the offence were that on 12th June 2014 at Borji location Wajir South District within Wajir County, being an Ethiopian citizen was found being unlawfully present in Kenya without a valid entry permit.

When the charge was read and explained to him in court on 15th June 2015, he was recorded as having pleaded guilty. The prosecutor then said that the facts were as per the charge sheet, and he responded that facts were true.

He was convicted.

In mitigation, he said that he had been in Kenya for 20 years and was fined Ksh. 100,000/= and in default to serve 3 years imprisonment and thereafter repatriated to Ethiopia.

He has now come to this court on appeal, on sentence. He listed 4 grounds in his amended grounds of appeal. He also filed written submissions, which I have perused.

During the hearing of the appeal, he orally said that he wanted the court to reduce the sentence.

Learned Prosecuting Counsel Mr. Okemwa opposed the appeal and submitted that the charge was read to the appellant in a language he understood and pleaded guilty. Counsel also submitted that the appellant said that he had been in Kenya for 20 years during mitigation, and that the sentence was both lawful and appropriate.

I have perused the record and considered the grounds of appeal and the submissions on both sides.

In my view, the plea of the appellant was properly recorded. It was a plea of guilty which was unequivocal. The only error on record is the prosecutor saying that the facts were as per charge sheet. In my view, an accused is entitled to be given a summary of the facts separately, to know whether they agree with the offence charged, and for the court to determine whether they disclose the offence charged. However, for this simple offence, in my view, no miscarriage of justice was caused by the prosecutor's shortcut. I uphold conviction.

As for the sentence, it is lawful. Taking into account the facts and circumstances disclosed to the trial

court, the sentence imposed cannot be said to be harsh or excessive. I will uphold the sentence.

The upshot is that I dismiss the appeal and uphold the conviction and sentence imposed by the trial court, together with the repatriation order back to Ethiopia.

Dated and delivered at Garissa this 6th May 2016

GEORGE DULU

JUDGE