



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL REVISION NO. 6 OF 2016

(From original conviction and sentence in criminal case No. 6 of 2016 of the SRM Magistrate's court at Mandera – P.N Areri - SRM).

HASSAN HUSSEIN ABDI CONVICT

V E R S U S

REPUBLIC RESPONDENT

RULING

The convict Hassan Hussein Abdi has come to this court through a request for criminal revision dated 18th February 2016, requesting that this court reviews, sets aside and quashes the sentence of the magistrate's court and that he be set free. The convict, having been convicted and sentenced in a Criminal case at Mandera court, I take this to be a request for review as provided under section 362 the Criminal Procedure Code (cap. 75).

Though this court in its review jurisdiction has no obligation require parties to address it, this court allowed both the convict the State to make address for consideration.

The convict submitted that he was a Kenyan citizen and that his conviction for being illegally in Kenya was therefore wrong. He complained that the sentence imposed on him by the trial court was harsh and excessive. He stated that his only mistake disclosed in the lower court was that he was in possession of documents belonging to somebody else, and did not show any Kenyan documents relating to himself.

Learned Prosecuting Counsel Mr. Okemwa submitted that he had now been served with documents which showed that the mother of the convict was a Kenyan. Counsel stated that the documents included a copy of an identity card of the mother of the convict, and a copy of a death certificate of the father. A copy of the birth certificate of the convict has also been provided. He stated that he had called Mr. Mulama the DPP's representative in Mandera for clarification who had said the convict was not able to explain himself when he appeared in court, and showed a lot of anxiety then and was thus convicted on his own plea.

Counsel submitted further that the convict was attempting to travel on a document which was not genuine, but because there was now a death certificate for his mother and the father, the court should peruse the said documents and make a decision in the matter.

I have considered this matter, under this courts revision jurisdiction provided under section 362 of the Criminal Procedure Code.

The convict was convicted in the Mandera Magistrate's Court with being unlawfully present in

Kenya contrary to Section 53(1)(j)(2) of the Kenya Citizenship and Immigration Act No. 12 of 2011. The particulars of the offence were that on the 3rd December 2015 at Mandera Township being a Somali national was found unlawfully present in Kenya without a valid passport or permit authorizing him to stay in Kenya.

He was also convicted of a second count of forgery of official documents contrary to Section 351 of the Penal Code. The particulars of the offence were that on the same day and place was found to have made an official document namely temporary movement permit serial No. 16335 from Busia Uganda on 27th October 2015 purporting to have been issued by the Ugandan Immigration Authority with forged Exist Stamp No. 0016 and Entry Stamp no. 0719 respectively a fact he knew it was not.

He was recorded as having pleaded guilty to both counts. He was convicted and sentenced to a fine of Kshs 300,000/= and in default to serve 3 years imprisonment on each of the two counts, the sentences to run consecutively. He was also ordered to be repatriated on completion of the sentence to Somalia.

I have perused the record. The convict says that he did not understand the proceedings and that he was a Borana. The record shows that the interpretation in the criminal proceedings was from English to Kiswahili. There is no indication that the convict stated during proceedings that he was a Borana and had difficulties in understanding Kiswahili language. In his mitigation he urged the court to help him and stated that his grandmother was sick and that he had no documents to use to travel. He urged the court to forgive him and said that his father was dead and that he was feeding his grandmother and siblings.

Even assuming that the convict was a Borana, there is no indication that he wanted a Borana interpreter or that he had difficulties in understanding Kiswahili language which was used in court.

In applying for this revision, the convict has annexed a number of photocopies of documents. These are, a certificate of birth issued on 16th of December 2013 in the name of Hassan with the father's name indicated as Adan Abdi Hassan and mother's name indicated as Awliya Ali Kerrow. This copy of birth certificate has a No. 1621679 which appears to have been produced from the computer. There is no indication that that is the serial number of the said birth certificate.

He also annexed a certificate of death No. 120828 issued by the District Registrar at Mandera on 17th October 2011 with a name Adan Abdi Hassan who died on 20th June 2009 aged 70 years. In addition, he annexed a Kenyan national identity card in the name of Awliya Ali Kerrow No. 1131292 issued on 13th May 2009.

All the above documents were not produced or referred to by the convict at the trial. Significantly, they do not by themselves prove that the convict is a Kenyan or that he is the son of Adan Abdi Hassan and Awliya Ali Kerrow. We have no evidence before this court nor was there evidence before the trial court, that the said documents belonged to him or his mother or his father.

It is instructive to note that the passenger ticket from Tawakal Express Bus which was found in his possession, had the name Hassan Hussein written in bold letters on top of another name which was erased boldly in hand. The convict did not, explain either in the trial court, nor in this court why there was that cancellation of names. There were even changes of the bus seat number and the date of travel without any explanation. This was the ticket that he was to use on 23rd December 2015 from Mandera to Nairobi before he was arrested.

On the day of arrest, he was found with a temporary movement permit No. 16335 said to have been issued by the Ugandan Authorities on 27th October 2015 for him to enter Kenya for 3 months. Entries were also made therein that he exited at Busia from Uganda and entered Kenya on the same 27th of October 2015. His photograph is stapled on that document. Again no explanation has been given by the convict for his possession of this document, which was the subject of the charge of forgery of an official document.

In my view the photocopies of documents the convict has annexed to his request for revision herein, cannot be said to be genuine. It is an attempt to mislead this court. He is trying to introduce false evidence through the back door which is not acceptable. Even if I was convinced that the documents were genuine, in my view, that would still not be a ground for review of the decision of the trial court, but for a retrial.

On the information provided by the convict herein, I decline to exercise the review powers of this court and uphold the conviction and all orders of the subordinate court.

Dated and delivered at Garissa this 5th day of July 2016.

GEORGE DULU

JUDGE