

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL REVISION NO. 14 OF 2016

(From original conviction and sentence in Criminal Case No. 173 of 2016 of the Chief Magistrate's Court at Garissa – M. Wachira - CM)

ABUBAKAR SHARIF APPLICANT

V E R S U S

REPUBLIC RESPONDENT

RULING

The applicant Abubakar Sharif commenced these review of sentence proceedings through a letter to the Deputy Registrar of this court dated 28th April 2016.

He was charged in the subordinate court with several counts. Count 1 was for making a document without authority contrary to Section 357(a) of the Penal Code. Count II was for forgery of a visa contrary to Section 54(1)(b) as read with Section 54(2) of the Kenya Citizenship and Immigration Act No. 12 of 2011. Count III was for being in possession of a forged visa contrary to Section 54(1)(c) as read with section 54(2) of the Kenya Citizenship and Immigration Act 2011. Count IV was for counterfeiting an Immigration Stamp contrary to section 54(1)(h) as read with section 54(2) of the Kenya Citizenship and Immigration act 2011. Count V was failing to report entry to an Immigration Officer contrary to Section 59 of the Kenya Citizenship and Immigration Act No. 12 of 2011 Regulation 17(1) (a) as read with Regulation 57 of the Kenya Citizenship and Immigration Regulations 2012. Count VI was for 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 pleaded guilty to all the counts. He was convicted and sentenced to a fine of Kshs 100,000/- on count 1. A fine of Kshs 100,000 on count II. A fine of Kshs 100,000/= on count III. A fine of Kshs 50,000/= on Count IV. A fine of Kshs 50,000 on count V, and lastly fine of Kshs 100,000/= count VI. In default, he was to serve one year imprisonment on each count. He was also ordered to be repatriated to Somalia after compliance with the sentence.

He has now come to this court under its revision powers urging me to review the sentence.

I will not review the sentence. The applicant is an adult and the special provisions of the Constitution with regard to children and the Children’s Act, do not apply to him. The law required courts to take the best interests of children to be paramount in all proceedings.

This court cannot entertain revision proceedings, where the one who brings the request for revision has a right of appeal. Section 364 (5) of the Criminal Procedure Code Cap 75 states as follows:-

“164(5) when an appeal lies from a finding, sentence or order, and no appeal is brought, no proceedings by way of revision shall be entertained at the insistence of the party who could have appealed.”

It is clear from the record that trial court explained and recorded that it explained the right of appeal of the applicant. He thus cannot plead ignorance of his right of appeal. Since he is the same person who has come to this court through the Revision Procedure while he has a right of appeal, this court cannot

entertain the revision proceedings. The applicant however has a right of appeal, and he can still seek for leave to appeal out of time.

I thus find that the application for revision of sentence by the applicant/convict as incompetent and I strike out the same. He may take necessary to appeal the decision of the magistrate, if he so wishes.

Dated and delivered at Garissa this 4th day of October 2016.

GEORGE DULU

JUDGE