

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.98 OF 2014

MOHAMED MAALIM ABUDULLAH.....
.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Mohamed Maalim Abudullah was charged with the offences under the **Kenya Citizenship and Immigration Act 2011**. He was charged with knowing possessing and using a passport in which a visa had been forged contrary to **Section 54(1)(c)** of the **Act**. He was also charged with failing to report entry contrary to **Section 16(1)(a)(6)** as read with **Section 57** of the **Act**. He was finally charged with being unlawfully present in Kenya contrary to **Section 53(1)(j)** of the **Act**. When the Applicant was arraigned before this court, he pleaded guilty to the charges and was fined a total of Kshs.1 million or in default he was to serve three (3) years imprisonment. On completion of the sentence, the trial magistrate ordered the Applicant to be repatriated to Somalia. The Applicant moved this court to have the sentences that were meted on him reviewed. The Applicant states that he pleaded guilty to the charge but the sentence that was meted on him was excessive in the circumstances. He stated that he was a man of little means and could not afford the fine that was imposed on him. He was apprehensive that if the repatriation order was given effect to, he would be taken to a country which still suffers from serious insecurity.

At the hearing of the application, Mr. Nyaribo for the Applicant reiterated the contents of the application. He submitted that the Applicant had stayed in remand custody for six (6) months before he pleaded guilty to the charges. He stated that the fine and the custodial sentence that was imposed on the Applicant was excessive. He took issue with the fact that the trial magistrate did not take into consideration that Somalia was a war torn country and therefore it will not be possible for the authorities to repatriate the Applicant to Somalia. He urged the court to direct that the Applicant be surrendered to the Department of Refugee Affairs to process and determine the Applicant's refugee status. Ms. Aluda for the State was not opposed to the proposal made by the Applicant that he be handed over to the Department of Refugee Affairs to determine his refugee status.

This court has carefully considered the facts of this case. The Applicant invoked the revisionary jurisdiction of the court under **Section 362** and **364** of the **Criminal Procedure Code**. Under the above sections of the law, this court has power to call for and examine any criminal proceedings to determine the correctness, legality and propriety of any verdict or sentence. In the present case, whereas it was evident that the trial court properly appreciated the immigration laws of this country, it was clear that the trial court did not take into consideration that any Somali citizen who has fled from Somalia on account of insecurity in that country is considered to be a prima facie refugee unless the contrary is established. The Applicant in the present case is clearly a prima facie refugee subject to his refugee status being determined by the Department of Refugee Affairs.

In the premises therefore, since the State is not opposed to the application made by the Applicant, the sentences imposed on the Applicant are set aside and substituted by an order of this court directing that the Applicant be handed over to the Department of Refugee Affairs to process his refugee status. In that regard, the Applicant shall be taken to Dadaab Refugee Camp for the purposes of the determination of his refugee status. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF FEBRUARY 2015

L. KIMARU

JUDGE