



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 163 OF 2013**

**CONSOLIDATED WITH CRA. NO. 75 OF 2014, 74 OF 2014, 61 OF 2014, 60 OF 2014, 167 OF 2013, 166 OF 2013, 164 OF 2013, 165 OF 2013**

**(From Cr. Case No. 2127 of 2009 Mombasa CM'c Court Hon. Ole Tanchu- SRM)**

**ABDIKADIR ISEY ALI & 8 OTHERS.....APPELLANTS**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

The Appellants were convicted and sentenced to seven (7) years imprisonment for the offence of Piracy contrary to section 69 (3) of the penal code.

The particulars being that:-

***“On the 22<sup>nd</sup> day of May 2009 in the internationally recommended transit corridor upon the high seas in the Central Gulf of Aden, jointly being armed with offensive weapons namely one AK 47 Rifle, three knives attacked motor vessel namely MARIA K and at the time of such act put fear in the lives of the crewmen of the said vessel”.***

Being aggrieved by the sentence meted out on them, the appellants have lodged this appeal.

The grounds are principally that the sentence of Seven years was harsh and excessive. Considering that they were in remand for a period of close to four years.

Secondly, that they were first offenders. That they have acquired skills while in prison which can help them advance their status in life.

Further due to deploring prison conditions they have been subjected to chronic respiratory diseases.

That their country of origin Somalia has undergone great changes and life is near normal and they

are willing to go back and be part of the transformation of their country.

I have noted that in this appeal the appellants are **not** represented. In the subordinate court they were represented by one Oruko Advocate.

The prosecution had asked for a deterrent sentence as the offence of Piracy was a serious one as it affects international security in high seas and also affecting tourism and international trade.

Counsel for the accused persons gave mitigation factors stating that the accused had been in custody for three years, they were young and were treated as first offenders.

The learned trial magistrate did note that the offence of Piracy carried a life sentence.

There having been in custody for three years was explained by the fact that the High Court had made a ruling stopping magistrate courts from dealing with piracy cases.

The magistrate also noted the accused acts caused trauma to the crew of the ship most of whom left employment.

I find no fault in the exercise of discretion by the trial magistrate in sentencing the appellants to seven years imprisonment. He had correctly observed that Piracy was a serious offence with national and international ramifications on security and International trade (commerce). It carries a maximum sentence of life imprisonment. The sentence of seven years cannot by any stretch of imagination be deemed as harsh and excessive. It is instructive to note that times have changed in Somalia. Life is near normal. The on-going programme to return the convicts on piracy cases back to Somalia so as to serve their remaining terms there ought and should be expedited. This will enable them to be visited by their families and relatives. It will also help decongest our prisons.

The upshot is that there is no good reason to disturb the sentence.

The appeal is dismissed. The sentence is upheld.

**Judgment delivered dated and signed in open court this 10<sup>th</sup> day of March 2015.**

.....

**M. MUYA**

**JUDGE**

**10<sup>TH</sup> MARCH 2015**

**In the presence of:**

State Prosecutor Mr. Jami

The appellants present

Court clerk Musundi