



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEALS NOS 87 AND 94 OF 2014**

**(CONSOLIDATED)**

**(APPEALS FROM CONVICTION AND SENTENCE IN KIGUMO SPM CRIMINAL CASE NO 1287  
OF 2014 – D ORIMBA, SPM)**

**1. ALI ISSAC**

**2. HAGOS GABREMARYAN.....APPELLANTS**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

1. The Appellants were on 23/05/2014 convicted upon their own plea of **human trafficking** contrary to **section 53(1)** as read with **subsection (2)** of the **Kenya Citizenship and Immigration Act, Cap 172**. They were each fined KShs 300,000/00 or in default to serve two (2) years imprisonment. They did not pay the fines and they commenced serving their default sentences. On 02/10/2014 the 1<sup>st</sup> Appellant, Ali Isaac, was released on bail pending disposal of his appeal. The 2<sup>nd</sup> Appellant, Hugos Gabremaryan, is serving his default sentence. They have appealed against both conviction and sentence.

2. The two appeals were on 21/04/2015 consolidated for hearing together. It was then apparent that the 2<sup>nd</sup> Appellant (who is an Ethiopian) understood neither Kiswahili nor English, and the court directed that an Ethiopian (specifically an **Amharic**) interpreter be provided for him at the hearing of the appeals on 22/06/2015. A request for the same was addressed in writing to the High Court, Nairobi. But come 22/06/2015, and no Amharic, or even Ethiopian, interpreter was provided. The court therefore decided to proceed with the appeals by way of revision rather than delay them any longer.

3. I have read the very brief record of the trial court. It is quite clear that the pleas of the Appellants were not unequivocal. The record states that interpretation was English to Kiswahili. As already observed, the 2<sup>nd</sup> Appellant understands neither Kiswahili nor English. So, he could not have understood and followed the proceedings. He could not have understood the charge he faced and plead to it in knowledge.

4. Secondly, after the Appellants supposedly admitted the charges, no facts were given by the prosecution. The prosecutor simply said, "Facts as per charge sheet." Given the nature of the offence charged, it was not sufficient merely to state, "Facts as per charge sheet." The Prosecutor ought to have given full facts.

5. It is also to be noted that in respect to the 1<sup>st</sup> Appellant, an age-assessment report was filed following an order of this court. At the time of the plea and sentencing the 1<sup>st</sup> Appellant was, and still is, a minor, now aged about 16 years.

6. For all the above reasons the Appellants' convictions are hereby quashed and the sentences passed against them set aside. The 2<sup>nd</sup> Appellant shall be set at liberty forthwith unless otherwise lawfully held. As already observed the 1<sup>st</sup> Appellant was released on bail. He and his surety are hereby released from their bonds. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 2<sup>ND</sup> DAY OF JULY 2015**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 3<sup>rd</sup> DAY OF JULY 2015**