



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

CR. REV. NOS. 151-155 OF 2013

ABDI KAARSHE MOHAMMED)
OSMAN HAJJ MOHAMMED)
BASRA HAJJ MOHMOUD)
HALIMA MOHAMED NUR)

AND

ADIEL BASHIR ADEN).....APPLICANTS

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is a consolidated ruling on Criminal Revision Nos:

- A) 151 OF 2013 - ABDI KAARSHE MOHAMMED -VS- REPUBLIC
- B) 152 OF 2013 -OSMAN HAJJ MOHAMMED -VS- REPUBLIC
- C) 153 OF 2013 -BASRA HAJJ MOHMOUD -VS- REPUBLIC
- D) 154 OF 2013 -HALIMA MOHAMED NUR -VS- REPUBLIC
- E) 155 OF 2013 - ADIEL BASHIR ADEN -VS- REPUBLIC

2. I have decided to render one ruling because all these Revisions are similar and/or arise from similar circumstances. The Prisoners Abdi Kaarshe Mohammed, Osman Hajj Mohammed, Basra Haji Mohmoud, Halima Mohamed Nur and Adiel Bashir Aden were charged and convicted by the Acting Chief Magistrates Court (Hon. C. Yalwala) of two offences under the Kenya Citizenship and Immigration Act No.12 of 2011 on 7/10/2013. The offences facing them were, being unlawfully present in Kenya contrary to Section 53 (1) and knowingly having in possession of scanned Kenyan national Identity Card which no proper account was given. All pleaded guilty to the charges.

3. Accordingly, they were convicted of the charges and save for Adiel Bashir Aden, who was

- sentenced to six (6) months imprisonment, the rest were sentenced to one year and six (6) months imprisonment. All were required to be repatriated to their country of origin upon serving their sentences.
4. Their files were placed before Gikonyo J on 11/11/2013 who directed that a responsible officer from the UNHCR do attend Court to give a report on the refugee status of the prisoners before a revision of their convictions and sentences could be addressed. I made a similar order on 10/12/2013. In pursuance thereof, on 27th January, 2014, one Linet Atieno Opiyo attended Court. She informed the Court that she is an advocate employed with the UNHCR, holding Kenya National Identity Card No.21283090 and UNHCR Employment Card No.101399. That she deals with legal matters within the Protection Delivery Unit at UNHCR, Nairobi.
 5. Ms Opiyo told the Court how UNHCR was informed of some asylum-seekers at Bungoma in December, 2013. How a suitability assessment determination was commissioned. That one of their officers by the name Mr. Allan Kiriga conducted a Refugee Status Determination interviews in early January, 2014 at the prison. That upon considering the said interviews, the UNHCR concluded that the prisoners met the criteria for inclusion under Section 3 of the Refugee Act. That it is upon that determination that the UNHCR wrote a letter to Court dated 21/01/14. Ms Opiyo produced in Court the copies of the Interview Reports and the UNHCR Refugee Status Determination (RSD) Assessment Forms for all the five (5) prisoners. Both the Interview Reports and the RSD assessment forms concluded that the five (5) prisoners were eligible to a refugee status. Ms Opiyo stated that she was accompanied to Court with a government official one Mr. Alex Hanjara.
 6. Mr. Hanjara informed the Court that he is a holder of national Identity Card No.13853797 and Staff Card No.1996017655. That he was from the department of Refugee Affairs under the Ministry of Interior and National Co-ordination dealing with Refugee affairs in the country. That based on the reports from the UNHCR, his department had concluded that the UNHCR should proceed to undertake the reception and registration of the prisoners as refugees. That the concerned government department was satisfied how the five (5) had made their way to Malaba and as to the circumstances of their arrest.
 7. I have considered the information given to the Court by both Ms. Opiyo from the UNHCR and Mr. Alex Hanjara from the Ministry of Interior and National Co-ordination. I have also carefully considered the Interview Reports and the RSD Assessment Forms that were produced by Ms. Opiyo of the UNHCR. I have noted that the prisoners are of Somali origin. They have explained how they variously made entry into Kenya from 2008. They have explained that they fled their country of origin because of apprehension. They have stated that, that country is in a state of rampant insecurity. They stated how they detoured from their journey to Kakuma Refugee Camp and ended at Malaba where they were arrested. They have indicated their unwillingness to return to their country of origin because of fear of certain persecution or death.
 8. Under Section 3 (1) of the Refugees Act, 2006, a person is a statutory refugee if such person:-

“(a) Owing to a well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”

Applying this definition to the prisoners before Court, it is clear that they can not be said to be statutory refugees as it is not claimed that their well founded fear of persecution is based on race, religion, sex, nationality or their membership of a particular social group or political ideology.

9. I have however, seen Section 3 (2) of that Act. It provides that:-

“A person shall be a prima facie refugee for the purposes of this Act if such a person owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of his Country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. (Emphasis added)

10. The prisoners have indicated that, they are of Somali Origin. That they fled that country because of the rampant insecurity caused by indiscriminate attacks by the Al Shabaab. I take judicial notice of the fact that since 1991, Somalia has had no stable government. That the lack of such government led to serious disturbance of public order and that it is a well founded fear that returning to Somalia may put the prisoners' life at risk.

11. Taking into consideration the information supplied to the Court by Ms.Opiyo from the UNHCR and Mr. Alex Hanjara from the Ministry of Internal Security and National Co-ordination, having also considered the Interview Reports and the RSD Assessment Forms produced, I am satisfied that the prisoners are *prima facie* Refugees under Section 3 (2) of the Refugees Act, 2006. The prisoners seem to have been asylum- seekers at the time of arrest, prosecution and conviction. Accordingly, I hereby review and set aside their convictions and sentences. The prisoners Abdi Kaarshe Mohammed, Osman Hajj Mohammed, Basra Hajj Mohmoud, Halima Mohamed Nur and Adiel Bashir Aden are to be released forthwith. However, they are to be released into the custody of the officers of UNHCR in the presence of Kenya officials dealing with refugee affairs, for their reception and registration as refugees.

Orders accordingly.

Dated and delivered at Bungoma this 13th day of February, 2014.

A. MABEYA

JUDGE