



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL REVISION NO. 255 OF 2013

1. TEKLAY DANIEL

2. TKLU GABRE

3. NATAY BENEK

4. PHILEMN BUKURTINO

5. WELDAB KIDOME

6. GABIEL KELE.....APPLICANTS

VERSUS

REPUBLICRESPONDENT

RULING

These revision proceedings were commenced by way of a letter dated 22nd of October, 2013 in which the applicants Accused No. 3 and 4 are seeking revisionary orders on the Sentences meted out on them on the grounds that during the hearing of the matter an Immigration officer did confirm to the Court that the documents they had were genuine though expired but they were in the process of renewing them but they were apprehended before they could begin the process.

Before the trial Court it was alleged that 2nd, 3rd and 4th Accused persons were refugees based at Kakuma Refugee Camp. An order was made for the Immigration Department to establish the true position.

The first Accused was established to be a refugee with a certificate to that effect. 4th Accused was said to have registered himself with the Refugee office and had a waiting card. The 3rd Accused had an expired Asylum Seeker Card. Later the prosecution withdrew charges against the 2nd Accused. Accused No. 3 and 4 changed their plea to guilty and after facts were re-read to them they admitted and were Convicted on their own plea of guilty and Sentenced to three months imprisonment without the option of fine. Counsel Miss Chala prays for revision for imposition of fine in the alternative.

Mr. Jami for the state did submit that the applicants were covered by the Refugee Act and that section 13 of the Act provides for stay of proceedings in conditions similar to those prevailing in this case. It provides,

“Notwithstanding the provisions of the Immigration Act or the Aliens Registration Act, no proceedings shall be instituted against any person or any member of his family in respect of his unlawful presence within Kenya.

(a) If such a person has made a bona fide application under section 11 for recognition as a refugee, until a decision has been made on the application and, where appropriate such persons has had an opportunity to exhaust his right of appeal under that section, or

(b) If such person has become a refugee”.

It is noted that the prosecution had told the Court that the 4th Appellant had a waiting card for certificate for refugee. As pointed out by Mr. Jami for the state, the police should not have charged him with this offence as he is covered under the Refugee Act. As for the 3rd Accused he had an asylum seeker card which had expired. He had not renewed it as required. The state concedes to this application for revision. I accordingly revise the Sentence to the term already served. Applicants are set at liberty unless otherwise lawfully held. They are ordered to regularize their stay in the country within fourteen (14) days from the date of release.

Ruling delivered dated and signed this 5th day of November, 2013.

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M. MUYA

JUDGE

5TH NOVEMBER, 2013

In the presence of:-

Learned Counsel for the applicants Miss Chala

Learned Counsel for the State Miss Ogweno

Court clerk Musundi