

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

Crim app 253 of 92

Msa v Republic

Omolo J

May 8, 1992,

Omolo J delivered the following Judgment.

The Appellant Ali Msa, pleaded guilty to a charge of being unlawfully present in Kenya contrary to Section 13(2) of the Immigration Act. The particulars contained in the charge sheet were that on the 25th March, 1992 at about 2.45 p.m. at Kilifi Township, the appellant was found being unlawfully present in Kenya in that he had no permit or authority to remain in Kenya. When the charge was read to the appellant he is recorded to have said in Somali language "It is true". The facts were then given and those facts were that on the 25th March, 1992 the appellant was spotted by police from Kilifi Police Station who were on patrol at Kilifi township. They suspected him and questioned him. It was then found that he was Somali citizen and that he had no permit or authority to remain here. He was arrested and taken to Kilifi Police Station and he was charged.

When asked whether those facts were true, the appellant is against recorded as saying "the facts are Correct." The magistrate thereupon convicted him. Pausing there, it is clear that the facts stated by prosecutor proved the charge against the appellant since those facts showed that the appellant was a Somali national and he was found in Kilifi town without a permit or authority to remain in Kenya. He admitted as much. It is only in mitigation that the appellant asked to be forgiven and said he was ready to return to Utange refugee camp where he had come from. That appears to imply that the appellant was a refugee and was required to stay at a camp at Utange. If those were the terms of his stay in Kenya, then he would be in any other part of the country unlawfully if he breached them. That must be why he admitted being at Kilifi unlawfully. Kilifi is part of Kenya and he was accordingly unlawfully present in that part of Kenya. He was rightly convicted and I dismiss his appeal as regards the conviction. The sentence imposed on the appellant in the circumstances was excessive. I reduce it to the period already served. The appellant is to be released from prison forthwith and be escorted to Utange refugee camp. Those shall be my orders in the matter.