

Omar v Republic

High Court, at Nairobi March 22, 1985 Gicheru J

Criminal Appeal No 18 of 1985 (Appeal from the First Class District Magistrate's Court at Garissa, M M Muthuka Esq) Advocates

M Jaffer for appellant C W Gatonye for respondent

March 22, 1985, Gicheru J delivered the following Judgment.

The appellant appears to have been a mental patient needing care and medication all the time, according to D M A Fazal of Mathari Hospital in his letter dated January 4, 1985 concerning the appellant a photostat copy of which is filed in this court's miscellaneous criminal application No 13 of 1985 refers. When the appellant was entering Kenya from Somalia contrary to section 13 (2) of the Immigration Act, chapter 172 of the Laws of Kenya before the 1st Class District Magistrate's court at Garissa and is purported to have pleaded guilty to the offence charged, he probably did not comprehend the nature of the proceedings against him owing to his mental illness. Indeed, from the photostat copy of his passport filed in the miscellaneous criminal application referred to above, it appears that the appellant had a valid re-entry pass to Kenya which had been issued in Nairobi on August 6, 1984. This re-entry pass was valid until August 5, 1985. When the appellant was therefore alleged to have committed the offence with which he was charged on December 14, 1984 he was lawfully present in Kenya. It is possibly because of his mental illness that he did not bring to the attention of the lower court his being in possession of a valid re-entry pass to Kenya. His conviction in these circumstances cannot stand. As the appellant has appealed to this court against conviction and sentence for the offence set out above, the said appeal is allowed. His conviction is quashed and his sentence of a fine of Ksh 1,000 or in default 3 months imprisonment together with an order for repatriation to the Kenya/Somalia border are set aside. Order accordingly.