IN THE COURT OF APPEAL

AT MOMBASA

(Coram:Madan Ag CJ, Kneller & Nyarangi JJA)

CRIMINAL APPEALS NO,S 89, 96, 106, 107, 108, 109, 127, 128, 129, 130, 134, 138, 139, 140, 141, 198 and 199 OF1985 (CONSOLIDATED)

BETWEEN

ONDARI & 17 OTHERS.....APPELLANTS

AND

REPUBLIC.....RESPONDENTS

(Appeals from the High Court at Mombasa, Bhandari J)

JUDGMENT

We consolidated these appeals with the consent of the principal state counsel and Mr Gachuhi for Beauchamp Juma Ogolo Akengo the appellant in (Criminal Appeal No 107 of 1985) and all the other 15 appellants who were unrepresented and present save for two who had served their sentences and been released.

Each appellant was charged separately before a court martial with the offence of mutiny contrary to section 25 (2) of the Armed Forces Act (cap 199) (the Act).

The particulars alleged that on August 1, 1982 being a serviceman in the armed forces and subject to the Act, he combined together with other soldiers of the Kenya Air Force to disobey lawful authority in such circumstances as to make the disobedience subversive of discipline, and took part in a mutiny by unlawfully arming himself with a self loading rifle and ammunition from the station's armoury without proper authority and unlawfully patrolled the residential and commercial streets of Nanyuki (or some part of Nairobi (according to where he was stationed) with the object of creating fear and disruption of social order in Kenya.

Each was defended by an officer. Each unequivocally pleaded guilty to the charge apparently and its particulars. The defending officer mitigated the offence by stressing the number in the appellant's family he had to support, his previous good character, his plea, his comparatively young age and how he saw the error of his ways and was full of remorse.

The sentences passed on the appellants ranged from 4 to 10 years imprisonment (which seem to us to be very disparate and cause us great concern) and each was dismissed from the armed forces.

Later each received a document entitled ‘Promulgation of findings, sentence and orders which informed him that all these pronounced by the Court Martial at this recent trial had been confirmed by the confirming officer who was the army commander and deputy chief of general staff. A final sentence added that the appellant had forfeited his service benefits having been dismissed from the armed forces.

Each filed in a notice of application to the High Court in Mombasa for time in which to appeal to be extended. He also added an application for leave to appeal against his conviction and his sentence with five or six grounds of appeal.

The grounds were that they did not or did not mean to plead guilty or he was over persuaded or even tortured into doing so, if what he did amounted to mutiny he was only obeying the orders of one or more superior officers, the defending officer was not of his choice and he did not defend him. There is nothing in the record of the proceedings to support any of these.

Mr Justice Bhandari certified that he had perused the record in each appeal and that he was satisfied the appeal had been lodged without any sufficient ground for complaint. He summarily rejected it under section 352 (2) of the Criminal Procedure Code (the code).

The particulars of the offence, it might be argued, were duplex. There are no convictions in even of these cases. And, with respect, the grounds of appeal did not come within the limits of the provisions of sections 352 (2) of the code. Firstly looked at, they were not limited to a complaint that the conviction was against the weight of the evidence. Whether or not they would have prevailed is another matter. They were such, however, that the judge was right to reject the appeal summarily. See *Young Charles Okang’ v Republic* KCA Criminal Appeal 98 of 1983 (June 30, 1983).

The learned judge did not hear the appellants in their applications for the time in which to appeal to be extended or for leave to appeal but, in effect, he granted each application and went straight to deal with their appeals. So the appellants were not prejudiced by his leep frogging procedure. He then refused leave to appeal which was either his answer to the second application, which if he had summarily rejected the appeal earlier was unnecessary, or an attempt to halt an appeal to this court which he had no jurisdiction to do.

There it is, however, a decision of the High Court on an appeal to it under the Act and such it is final and not subject to a further appeal from December 28, 1984. See section 115 (3) of the Act.

The appeals are incompetent and must be dismissed. Those are the orders of the court.

We have referred to the greatly disparate, sentences passed in these cases ranging from 4 to 10 years. We would draw the attention of the commissioner of prisons and the minister to the provisions of section 46(4) of the Prisons Act which allows remission to be granted for “other special” grounds. The courts always aim at parity of sentences to obviate the grievances of discrimination among prisoners. We would recommend that the sentences passed in these cases be reviewed with the object of removing harshness out of these sentences which are obviously disparate.

Dated and Delivered in Mombasa this 26th day of January 1986.

C.B.MADAN

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JUDGE OF APPEAL (AG CJ)

A.A.KNELLER

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JUDGE OF APPEAL

J.O.NYARANGI

.....

JUDGE OF APPEAL

I certify that this is a true copy

of the original

DEPUTY REGISTRAR