

IN THE RESIDENT MAGISTRATE COURT

LILONGWE DISTRICT REGISTRY

CRIMINAL CAUSE NO. 26 OF 2005

The Republic vs. Abdul Rahman and Others (Somalians)

Present:

H/W M. Mvula Senior Resident Magistrate
Mr. Kaputa State Prosecutor

JUDGMENT

The convicts in this matter, namely Abdul Rahman and 9 others were charged with the offence of illegal entry c/s 5 as read with 539 of the Immigration Act.

To these particulars, the convicts all pleaded guilty and as per procedure, the state read the facts and gave evidence against the convicts herein. When the facts were presented against them all the convicts did not object and the court duly entered a conviction.

The State gave the antecedents that all the convicts are first offenders and the court gave the convicts a choice to plead in mitigation and it was the result of the pleas respective of the convict that made this court to adjourn and read around the subject to pass an appropriate verdict.

The most common plea that came out of the convicts was the fact that the convicts seek refuge. They seek shelter as in Somalia there is no life. They need food and education. They are all fleeing because of war and they need

to have a peace of mind as should they be put in a refugee camp, they will be able to start a new life.

Perhaps to mention the factor that moved this court to decide the plight of the sentence, was the plea taken by Abdirizak Adam. He said that the cells at Maula are comfortable and before they are taken to a refugee camp, they should be staying at Maula. Any person who has been to Maula before, will note that the living conditions there are tough. To find a person saying that life in Maula is better compared to Somalia is a sad situation and there is need to assist such people. After all, we are all human beings and more importantly we are all children of one mother, that is Africa the continent.

The offence with which the convicts were charged is a misdemeanor and carries a maximum sentence of 1 year imprisonment with hard labour pending the certificate to the Minister to depart such convicts.

However, precedents have shown that where the sentence provided for carries a maximum sentence of 1 year, sending such convicts on a custodial sentence should be the last resort and such persons should be considered for either a suspended or a community service order or else a fine.

Looking at the circumstances around which the present offence was committed, the above sentence would not fit the present offence as the convicts are asylum seekers and we have to turn to the Refugee Act.

Section 10 (4) of Refugee Act states that:

“A person who has illegally entered Malawi for the purpose of seeking asylum as a refugee shall present himself to a competent officer within 20 hours of his entry or within such longer period as the competent officer may consider acceptable in the circumstances and such person shall need be detained, imprisoned, declared prohibited immigrant or otherwise penalized by reason only of his illegal entry or presence in Malawi unless and until the committee has considered and made a decision on his application for refugee status.”

This court construes this section to mean that the asylum seekers once they entered Malawi, should have introduced themselves to a competent officer to seek refugee status. In these circumstances, competent office as read from Section 2 of Refugee Act, means any immigration officer, boarder officer,

police or security officer. These convicts did not follow this procedure, but instead entered and stayed illegally in Area 2.

In African culture, it is prudent that once one person goes to a foreign area or home you introduce yourself and the possible reasons for your visit. The courts however, thought they would attain asylum by the back-door by fraudulently finding solace in the suburbs of Area 2, without proper procedures.

However, on the other hand, we understand that there has been war in Somalia for the past 15 years. There is no properly constitutional government and there are no proper procedures to regulate the flow of individuals to and from Somalia. As such, any reasonable individual would not expect such people to have, let alone, possess valid travel documents. To such convicts, the priority is just to get a peaceful place, where it is quiet and welcoming so as to attain sleep, food, paper clothing, let alone education.

The reading of the Section 10 (4) of refugee Act is to the effect that so long the person has sought asylum he should not be imprisoned or detained by reason of illegal entry.

Illegal entry of any person for purposes of seeking asylum does not disqualify the applicant to become a refugee. However, any person who illegally enters in Malawi as any asylum seeker is supposed to present himself within 20 hours of his entry before a competent officer but should not be detained, imprisoned, declared prohibited immigrant or otherwise penalised by reason only of his illegal entry or presence in Malawi until the committee makes a decision on his application.

From this section, this court is surely not a competent person/officer to which the present application for asylum status should be made.

To this end, this court forwards your application to the Refugee Committee established under Section 3 of Refugee Act as they are the office, competent enough to determine your status.

This court therefore reserves the sentence apart from forwarding all of you convicts *cum* asylum seekers to the Refugee Committee to determine your status. Until that is done, you are to be sent to Dzaleka refugee camp or any

designated place by the Government of Malawi so that you are interviewed and are properly looked after in light of your status here in Malawi.

All the prayers you have sought such as food, education and shelter are basic rights and are reflected in the Bill of Right Chapter of the Malawian Constitution and as a nation that ratified the Human Right Charter, we have to uphold and preserve such rights especially if the parties seeking those are asylum seekers.

Made in open court this 9th Day of May 2005 at Lilongwe Chief Resident Magistrate Court.



M. zonde Mvula
Senior Resident Magistrate