

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 60 OF 2013

Being appeal from original conviction and sentence by Senior Resident Magistrate at Mwingi (Mr. H.M. Nyaberi, SRM as he then was) in Criminal Case No. 107 of 2011

ALI HASSAN ABDI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

This court has already dismissed the appeal filed on 6th May 2014. This followed failure of the appellant to attend court on 26th June 2014 to prosecute the case. Following that dismissal, counsel for the respondent alerted the court that the appellant had not served the sentence imposed by the lower court because he had been on bond pending hearing and determination of this appeal. I adjourned the case for ruling on 30th June 2014 to give me time to read the file.

I have read the record of the court file. The appellant was convicted on his own plea of guilty and sentenced to serve three (3) months imprisonment. This was on 7th February 2011.

Thereafter, his counsel on record applied that the appellant be admitted to bail pending hearing and determination of an intended revision. The court allowed the application and admitted the appellant and his co-accused to Kshs 50,000 with a surety of like amount.

The two convicts in the lower court filed Criminal Revision No. 4 of 2011 at Machakos. It was heard and determined on 15th June 2012. The Revision was dismissed. The judge did not address the issue of sentence yet to be served.

The appellant filed this appeal but it is not known what became of the other convict Mr. Bashir Mohamed Somo.

I have confirmed that it is true that the appellant did not serve sentence imposed on him. Having dismissed this appeal, the appellant shall automatically serve the sentence imposed by the lower court. This court orders that he be arrested and placed in custody to start serving the three month sentence. The Office of the Director of Public Prosecutions are also directed to cause investigations into the whereabouts of Mr. Bashir Mohamed Somo to determine if he has served the sentence imposed on him failing which appropriate action be taken against him. It is so ordered.

Dated, signed and delivered this 30th June 2014.

S.N.MUTUKU

JUDGE