IN THE SEYCHELLES COURT OF APPEAL

[Coram: A.Fernando (J.A), M. Twomey (J.A), J. Msoffe (J.A)**]**

CriminalAppeal SCA31- 37/2014

(Appeal from Supreme Court Decision16/2013)

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1. Mohamed Shire
2. Abdulahi Said Ali
3. Abdifatel Said Oman
4. Said Yusuf Diriye
5. ChachiTussi Yusuf
6. Abdulahi Mohamed
7. Ali Isack Ahmed

Appellants

Versus

The Republic — Respondent

Heard: 18 August 2015

Counsel: Mr. Rene Durup for the Appellants

Mr. Hermanth Kumar for the Respondent

Delivered: 28 August 2015

JUDGMENT

A.Fernando (J.A)

1. The seven Appellants appeal against their conviction by the Supreme Court for the offence of piracy contrary to section 65(1) and (4)(b) of the Penal Code, which was the second count in the indictment levelled against them.

2. According to the particulars of offence the seven Appellants along with two others who were discharged at the conclusion of the trial; between the 18th and 19th days of February 2013, jointly and severally participated in the operation of a ship, namely a skiff with knowledge of the facts making the same a pirate ship.
3. The Appellants had been acquitted at the conclusion of the trial of the first count which was in relation to the offence of piracy, contrary to section 65(1) and (4)(a) of the Penal Code, the particulars of which were to the effect that the Appellants jointly and severally, on the High seas , being the crew or passengers of a private vessel committed for private

ends an illegal act of violence or depredation against the M/V Alba Star and her crew, for lack of evidence.

4. The following grounds of appeal can be deduced from the Appellants Heads of Arguments:
   (i) "Conviction cannot be supported by the evidence
   (ii) There is no evidence of individual voluntary participation of the Appellants with knowledge of facts".
5. The relevant provisions of the Penal Code under which the Appellants were indicted are cited below:

> "65. (1) Any person who commits any act of piracy within Seychelles or elsewhere is guilty of an offence and liable to imprisonment for 30 years and a fine of R1 million.
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> (2) Notwithstanding the provisions of section 6 and any other written law, the courts of Seychelles shall have jurisdiction to try an offence of piracy or an offence referred to under subsection (3) whether the offence is committed within the territory of Seychelles or outside the territory of Seychelles.
>
> (3)……
>
> (4) For the purposes of this section "piracy" includes-
>
> (a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed-
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> (i) on the high seas, against another ship or aircraft, or against persons or property on board such a ship or aircraft;
> (ii) against a ship, an aircraft, a person or property in a place outside the jurisdiction of any State;
>
> (b) any act of voluntary participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate ship or a pirate aircraft; or
>
> (c)…….
>
> (5) A ship or aircraft shall be considered a pirate ship or a pirate aircraft if-
> (a) it has been used to commit any of the acts referred to in subsection (4) and remains under the control of the persons who committed those acts; or
>
> (b) it is intended by the person in dominant control of it to be used for the purpose of committing any of the acts referred to in subsection (4)."

6. To be convicted of an offence under section 65(4)(b) the elements of sections 64(4)(b) and 65(5) needs to be necessarily established as the definition of a pirate ship is to be found in section 65(5)(a)&(b). There is no burden on the defence and thus the prosecution would have to necessarily establish beyond a reasonable doubt that each of the Appellants were:

    i. involved in an act, severally or jointly
    ii. of voluntary
    iii. participation
    iv. in the operation of a ship

    AND that ship

    v. has been used to commit any illegal act of violence or detention, or any act of depredation, committed for private ends by its crew or its passengers and remained under the control of the persons who committed those acts

    OR

    it is intended by the person in dominant control of it to be used for the purpose of committing any illegal act of violence or detention, or any act of depredation, committed for private ends.

7. Even if it could be presumed that a person had knowledge that the ship had been or was to be used for the purpose of committing acts of piracy, if he had not <u>voluntarily participated</u> in the operation of the ship such person could not be liable. Also even if the person had voluntarily participated in the operation of the ship <u>but without knowledge</u> that the ship had been or was to be used for the purpose of committing acts of piracy he cannot be made liable. This is because if such person had voluntarily participated in the operation of a ship with the intention of committing an another illegal purpose, such as smuggling of arms, narcotics or contraband, such person cannot be made liable for an offence under section 65(4)(b). There is a necessary link between 65(4)(b) and 65(5)(b) and thus both elements in 65(4)(b) and 65(5)(b) have necessarily to be proved by the prosecution beyond a reasonable doubt.
8. In cases of piracy a Court must also bear in mind as to when a person became aware of facts making it a pirate ship. Was it before or at the time he joined the ship or only in the middle of the ocean when possibly he had no other option but to continue remaining in the ship; especially in a case when the evidence against the accused does not disclose of any particular act done by him. There should be direct or circumstantial evidence to establish voluntary participation and knowledge.
9. If an inference is to be drawn from an accumulation of facts, the inference will depend on a concatenation of circumstances which point to a particular conclusion. Suspicious circumstances do not establish guilt. Nor does the proof of any number of suspicious

circumstances relieve the prosecution of its burden of proving the case against an accused beyond reasonable doubt and compel the accused to give or call evidence especially in view of article 19(2)(a) of our Constitution which states: "Every person who is charged with an offence is innocent until the person is proved or has pleaded guilty."(emphasis added) This goes beyond, unlike other Constitutions, which provides for a 'presumption of innocence'. The effect of the prosecution's evidence in its entirety, may raise a probability of the guilt of the accused. But probability, even high probability, does fall short of the recognized standard of proof of a serious criminal charge which has long been a feature of the administration of criminal justice in this country. It is a fundamental principle that no person accused of a crime is bound to offer any explanation of his conduct, or of circumstances of suspicion which attach to him unless the law imposes a burden on him of proving particular facts or declares that the proof of certain facts shall be prima facie proof of the offence or of any element thereof. The only limitation on the scope of this fundamental principle is that, if the accused declines to offer an explanation even though a strong case has been made out against him and though it lies in his power to offer evidence, it is a reasonable conclusion that he refrains from doing so only from the conviction that the evidence suppressed would operate adversely to his interest. But this qualification to the accepted principle does not justify a determination that where a prima facie case is made out on the basis of circumstantial evidence, the accused is bound to offer an explanation.

10. A Court must also bear in mind that the facts from which the inferences are sought to be made may not have been correctly observed or reported and that there is a difficulty of assimilating the diverse aspects of the evidence available in such a manner as to obtain proof of the facts in issue. Misconceptions as to the objective facts may vitiate the inferences drawn from the facts. Furthermore, it does not follow that, once the facts themselves are correctly apprehended, the inferences from them are necessarily sound.
11. Where the circumstantial evidence is equally reconcilable with two or more hypotheses, there is obvious danger in an attempt by the trial Judge to express a preference for one hypothesis. In order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis than that of guilt. The proved facts should be such that they exclude every reasonable inference from them, save the one to be drawn. When the purpose of those arrested at sea could also have been smuggling of arms, narcotics or contraband, or human trafficking it is the duty of the prosecution to exclude such possibilities.
12. Seychelles law does not make provision for a presumption of piracy against persons found in the high seas while being in possession of piratical implements or those found cruising in skiffs in suspicious circumstances in the high seas plagued by pirate attacks. Any vessel 'equipped for purposes of piracy' is made an offence in Hongkong, **Hongkong Criminal Law Statute, Cap 200, section 22**. In the case of the **Republic VS Mohamed Abdi Jama and six others, SC Cr Side No 53 of 2012,** it was stated: "It

should be noted that our law neither contains 'equipment provisions' nor expressly caters for prosecution of suspected pirates cruising the high seas looking for prey." **Article 15 of the United Nations Security Council Resolution (UNSCR) No. 1846 of 2nd December 2008** gives states the power to create offences and establish jurisdictions in order to suppress and deter piracy.

13. This Court stated in the case of **Mohamed Hassan Ali and three others VS The Republic SCA CR NO 22 of 2012**:

"Section 65 does not make provision for a presumption of piracy against persons found on the high seas while being in possession of piratical implements or those found cruising in skiffs in suspicious circumstances on the high seas plagued by pirate attacks. Under the Misuse of Drugs Act the following presumptions apply:

> A person found in or escaping from any place or premises on which it is found that plants referred to in section 8 are being cultivated shall be presumed, until he proves the contrary, to have been cultivating the plants." **[Section 16(3) of the Misuse of Drugs Act – Cap 133]**
>
> A person found in or escaping from any place or premises which is proved or presumed to be used for the purpose of smoking, consumption or administration of a controlled drug shall, until he proves the contrary, be presumed to have been smoking, consuming or administering a controlled drug in the place or premises."**[Section 16(2) of the Misuse of Drugs Act – Cap 133]**
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> A person found in or escaping from any place or premises on which it is found that a controlled drug is being manufactured shall be presumed, until he proves the contrary, to have been manufacturing the controlled drug." **[Section 16(4) of the Misuse of Drugs Act – Cap 133]**
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> Section 293(c) of the Penal Code states: "Any person who is found having in his possession by night without lawful excuse, the proof of which lies on him, an instrument of housebreaking is guilty of a felony….."
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> **Section 174(d) of the Penal Code** states: "Every person found in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose shall be deemed to be a rogue and vagabond….".

It has been said "It is doubtful whether persons cruising in armed vessels with the intention of committing piracies are liable to be treated as pirates before they have committed a single act of violence" – **Oppenheim's International Law, 9th ed, Volume 1,page 753.**

Thus it is our view that in the absence of a presumption of piracy against persons found in the high seas while being in possession of piratical implements, a conviction on the basis

of voluntarily participating in the operation of a ship with knowledge of the facts making the same to be a 'pirate ship' cannot be sustained. We have also to be conscious of the fact that there are armed personnel found on ships cruising the high seas who are involved in illegal activities other than piracy, such as human trafficking, trafficking in arms, dangerous drugs and contraband.

We are of the view that it is time for the relevant authorities in Seychelles to amend the piracy law to create an offence of piracy on the basis of a presumption by criminalizing cruising on the high seas while in possession of piracy equipments and cruising in skiffs in suspicious circumstances on the high seas plagued by pirate attacks, similar to the rebuttable presumptions that have been created in the Misuse of Drugs Act. The creation of such a presumption will not be in violation of **article 19(2) (a) of the Constitution** which states: "Every person who is charged with an offence is innocent until the person is proved or has pleaded guilty", in view of the derogation to such right provided in article 19(10) (b) of the Constitution. **Article 19(10) (b)** provides: "Anything contained in or done under the authority of any law necessary in a democratic society shall not be held to be inconsistent with or in contravention of clause (2) (a), to the extent that the law in question imposes upon any person charged with an offence the burden of proving particular facts or declares that the proof of certain facts shall be prima facie proof of the offence or any element thereof.**"**

14. One of the grounds of appeal is that there is "no evidence of individual voluntary participation". The Appellants have been charged on the basis that they "jointly and severally voluntarily participated in the operation of a ship". Section 65(4) (b) makes reference to "any act of voluntary participation". Section 22 which makes reference to secondary party liability refers to the doing of an 'act'. Thus there needs to be proof of some overt act on the part of each of the Appellants, whether done individually or jointly with the other Appellants before he can be convicted. **Basnayake CJ in the Sri Lankan case of Vincent Fernando (1963) 65 NLR 265** in expounding on the dictum "They also serve who only stand and wait" propounded **by Lord Sumner in Barendra Kumar Ghose (1925) A.I.R. (P.C.) 1**; had stated that these words "have to be regarded as applying not to a bystander who merely shares mentally the criminal intention of the others but to a person whose act of standing and waiting is itself a criminal act in a series of criminal acts done in furtherance of the common intention of all." Thus what is required in view of the clear provisions of section 65(4)(b) and section 22 of the Penal Code is evidence of a participatory presence by each Appellant. Courts should be cautious in rushing to a conclusion that all persons found on a pirate ship are necessarily pirates and convict them en bloc.

15. So long as there is evidence of some act of participation by each of the accused whether by way of firing or holding a gun, jettisoning goods, manoeuvring the ship, taking care of supplies or being on the lookout with a binoculars; that would suffice. In the case of **Mohamed Ahmed Ise and four others, SC Cr Side No. 76 of 2010** it was stated "It is immaterial if the prosecution does not point out who specifically did what from the PAG, as long as it is proved that an accused was party to the joint accomplishment of this

criminal object……" In other words there must be evidence of division of labour aimed at one common objective.

16. The prosecution case is that on the 19th of February 2013 the Royal Netherland Naval Frigate, 'HNLMS De Ruyter', on information received detected a larger skiff that was towing a smaller skiff. When the helicopter on board the 'Ruyter' approached the two skiffs, which were initially tied together, they had split up and headed in different directions. The 'De Ruyter' had approached the larger skiff and ordered its occupants, who were Somalis namely the 1st, 2nd, 3rd, and 4th Appellants along with the two others who were discharged by the Supreme Court to surrender. They had surrendered without any form of resistance and by raising their hands. They were detained on board the 'De Ruyter'. The smaller skiff however with the 5th, 6th and 7th Appellants had sped off in the direction of Somalia despite the warning shots fired by the helicopter on board the 'Ruyter' in front of the smaller skiff. A Spanish helicopter, named 'Toro' had joined in the chase of the smaller skiff and had also fired warning shots and dropped smoke markers and after about three hours had brought the smaller skiff to a halt. Other than fleeing from their pursuers the three Appellants had surrendered without putting up any form of resistance.

17. The reasoning of the Learned Trial Judge for the conviction of the Appellants is found at paragraphs 72 to 77 of her judgment which is reproduced herein.

"[72] I now deal with count 2. Circumstantial evidence can establish beyond a reasonable doubt that the intention of A1, A3, A4, A6, A7, A8 and A9 was to use their vessels to carry out piratical attacks. The evidence is "a combination of factors including the presence of equipment suitable for carrying out pirate attacks, the absence of evidence of a legitimate trade, the composition of the group, the position of the vessels, and the behaviour of the accused persons when approached by authorities: <u>The Republic vs. Mohamed Abdi Jama and six others</u>, Supreme Court of Seychelles, Criminal Side 53 of 2011.

[73] The observations of the prosecution witnesses, backed up in many instances by the photographic and video exhibits produced, showed this court how the vessels had been seen in the typical pirate action group formation: See <u>The Republic vs. Liban Mohamed Dahir and others</u>, CR 7 of 2012, para 23, the larger vessel carrying most of the supplies and towing the smaller. Without the larger skiff, the smaller one could not refuel, get food, and reach the High Seas. Further prosecution witnesses observed items being jettisoned from the larger skiff, and the smaller skiff was used to make a desperate high speed escape, stopping only when Toro, opened fire.

[74] I have also given serious consideration to the position where the larger and smaller skiff and their respective occupants, namely, A1, A3, A4, A6, and A7, A8 and A9 were detected; on the High Seas, far from local fishing grounds.

[75] Contrary to the contentions of learned counsel for the defence, the equipment that was found on the larger and smaller skiffs or observed from the air is further evidence of

the purpose of A1, A3, A4, A6, and A7, A8 and A9 and their intention in being out in the High Seas –

1. *A hooked boarding ladder of a type not suitable for lawful activities and commonly found aboard pirate vessels: The Republic vs. Liban Mohamed Dahir and others, supra. I note that the ladder was observed from the air and on photographs.*
2. *A smaller skiff with powerful outboard engines.*
3. *A supply of food for approximately one week.*
4. *A GPS unit.*
5. *A RPG aiming sight found in the larger skiff.*
6. *Discharged bullet casing.*
7. *Mobile phones.*

[76] This court notes that though A1, A3, A4, A6, A7, A8 and A9 had stated in each of their respective statements under caution that they were poor fishermen, there was clearly an absence of hooks, lines, nets or any evidence of fishing gear (or fish) or equipment to preserve any fishing catch.

[77] I found the evidence of the prosecution witnesses to be consistent and cogent, and I found them to be credible witnesses. On the other hand I attach no weight to the version of the defence. I have not even the slightest doubt that A1, A3, A4, A6, A7, A8 and A9 were at all material times jointly operating on the High Seas as a pirate action group, intending to use their skiffs as a pirate vessel to commit any act of piracy. The prosecution have proven the elements of the offence under count 2 beyond a reasonable doubt."

18. We are of the view that merely from the positioning of the vessels at sea with the larger vessel towing the smaller one and carrying most of the supplies alone, it is not possible to conclude that that this was a "typical pirate action group" as stated by the Learned Trial Judge.

19. The evidence on record does not clearly establish "items being jettisoned from the larger skiff" as referred to at paragraph 73 of the judgment and relied upon by the Learned Trial Judge for convicting the Appellants. The defence had argued in their Heads of Argument that "There is no evidence from video that Appellants 'intentionally' jettisoned any incriminating evidence". PW 9 Hernandez had stated under cross examination that there is no photographic evidence of items being dropped but "only infra-red video because we were very high in high altitude" and that although they could see that something was dropped in the water they were unable to see its size. When the video footage had been played before the Trial Court PW 9 had pointed out to something being dropped and floating around. The following line of cross-examination is to be noted:

"Q. So, Officer in fact you cannot say if someone threw something outside or something fell out of the boat?
A. I think they are throwing something, I do not know exactly.

Q. But it could have been possible that something was close to the edge of the boat and it fell over as well?
A. I do not know.
Q. If it is floating it cannot be anything heavy, it could be something that fell off the boat?
A. I do not know exactly what.
Q. So, it is not conclusive that they throw it?
A. (No answer)"

20. The Learned Trial Judge had also based her conviction on the fact that "the larger and smaller skiffs and their respective occupants were detected on the High Seas, far from local fishing grounds". There is no evidence as regards local fishing grounds or how far from local fishing grounds the skiffs were detected. According to the testimony of PW 1 Leibregs when questioned as to how closest they approached the Somali coast during the operations to arrest the skiffs his answer had been "I can't remember the exact distance but we must have been at least 20 or 30 nautical miles from the coast of Somalia and they were possibly in visual sight of the coast of Somalia". The Learned Trial Judge had possibly mistaken herself on this matter by taking into consideration of the prosecution evidence of the place from which a distress call had originated, namely the place where MV Alba Star had been attacked. The Appellants had been acquitted of count one, which was in relation to the attack on MV Alba Star due to lack of evidence and thus any evidence as to where MV Alba Star was when it was attacked has no relevance in the determination of count two under which the Appellants were convicted. Had the Learned Trial Judge not been mistaken on this important fact we do not know what conclusion she would have arrived at.

21. At paragraph 75 of the judgment the Learned Trial Judge relies on "a hooked boarding ladder of a type not suitable for lawful activities and commonly found aboard pirate vessels" to base her conviction. This certainly is not an uncontroverted conclusion and the only assumption a Court should always arrive at when a hooked boarding ladder is detected. The Court had also not had the priviledge of seeing the ladder but had to rely on the testimony of witnesses who had made their deductions from infra red video and photographs that were taken from the air and at a high altitude. The Learned Counsel for the Respondent admitted at the hearing before us that it is not clear from the video or the photographs of the presence of a ladder. It is interesting to note the examination of PW 5 Weigman by the prosecutor in regard to the ladder:

"Q. Can you look at this photograph carefully please and if you concentrate your attention on the right hand the starboard side just interior can you see two lines just to the left of the large orange tarpaulin?
A. Yes I can see two lines.
Q. With another shorter line joining the two.
A. Yes."

According to PW 3 Cornelis he did not actually see nor could he say from the photograph the length of the ladder. In view of what has been stated herein we cannot conclude that

there was in fact a ladder on any one of the skiffs and even if there was one, we cannot necessarily conclude that it was of a type not suitable for lawful activities and commonly found aboard pirate vessels.

22. As regards the "RPG aiming sight found in the larger skiff" relied upon by the Learned Trial Judge as an item of circumstantial evidence; the defence argues in their Heads of Arguments that it "was not established by any ballistic expert that it was a RPG eyepiece". It had been the evidence of PW 5 Weigman that "It was a pretty old aim device, was rusted and there was no attachment to it". He had also stated that he was not in a position to state that it can be used for other things. This is in line with the evidence of one of the persons accused before the trial Court but acquitted by the Learned Trial Judge who had said that the RPG aiming sight was "found on the coast of Somalia and we use it to looks for the hook"(verbatim).

23. As regards the "Discharged bullet casing" found on the smaller skiff and relied upon by the Learned Trial Judge as an item of circumstantial evidence, the defence argues in their Heads of Arguments that "The casing could very well have originated from the helicopters firing on the boat". This argument finds support as per the evidence of PW 5 Weigman, for it was found in an open compartment of the smaller skiff. Further there is no ballistic evidence to exclude the possibility of it being the discharged shell casing from one of the guns admittedly fired from one of the helicopters.

24. As regards points 2, 3, 4 and 7 referred at paragraph 75 of the judgment by the Learned Trial Judge as items of circumstantial evidence and referred to at paragraph 17 above, defence had argued respectively that "Boats need powerful outboard engines; Fishermen need food to survive and going out at sea for one week and even longer is not unusual; Fishing boats are encouraged to have GPS unit for navigational safety at sea and that Fishermen are encouraged to bring communication tools at sea". We do agree with this submission.

25. We have stated at paragraph 10 above that a Court must also bear in mind that the facts from which the inferences are sought to be made may not have been correctly observed or reported and that there is a difficulty of assimilating the diverse aspects of the evidence available in such a manner as to obtain proof of the facts in issue. Misconceptions as to the objective facts may vitiate the inferences drawn from the facts.

26. The rest of the items relied upon by the Learned Trial Judge at paragraph 75 of the Judgement as circumstantial evidence against the Appellants, namely, "the smaller skiff having powerful outboard engines, a supply of food for approximately one week, the GPS unit found in the larger skiff and the mobile phones found in the two skiffs" do not by themselves or taken in conjunction lead to the inevitable conclusion that they were pirates.

27. The proved facts in this case do not lead us to the necessary conclusion that they are incompatible with the innocence of the Appellants and incapable of explanation on any other reasonable hypothesis than that of their guilt.

28. The Learned Trial Judge had rejected the Appellants defence in its totality that they were poor fisherman in view of the fact that there was an "absence of hooks, lines, nets or any evidence of fishing gear (or fish) or equipment to preserve any fishing catch". Since there is no reference in the judgement to any of the statements of the Appellants, which had been put forward as part of the prosecution case, we do not know to what extent the Learned Trial Judge had considered the statements of the Appellants before rejecting them in their totality.

29. By way of summary, the version of the six persons found on the big skiff is to the effect that they were all fishermen who had gone out fishing with fishing equipment such as hooks and nets and a GPS to guide the skipper. In fact the task to be accomplished by some of the persons was to put out the nets into the water and pull the net back into the boat when fish are caught. The net is put into the water at night and one of them monitors the string that is tied on to the boat. The pulling of the net is done in the morning. When they catch fish they contact the owner of the boat who then sends other boats to which they deliver the fish that is caught in the mid sea; and inform the owner of the amount of fish caught and delivered to the boat that came to pick up the fish. These boats that come to take delivery of the fish are from Oman, Yemen, and Iran and the workers on those boats are Arabs. On the third day they had lost their net and hooks. This is because the 3rd Appellant who kept watch over the nets at night had fallen asleep as it was cold and the nets had drifted as it was windy. This may be an explanation to the "absence of hooks, lines, nets or any evidence of fishing gear (or fish) or equipment to preserve any fishing catch" commented on by the Learned Trial Judge. While looking for their net they had found three men who were drifting in a small skiff. They repaired their engine and during this period they had tied their small skiff to their big skiff. One of the persons arrested on board the big skiff had stated that the RPG that was found on the big skiff by the Danish navy, they had found on the coast in Somalia and used it for fishing. This may lend support to the defence version as regards the RPG aiming sight found in the larger skiff referred to at paragraph 21 above.

30. By way of summary, the version of the three persons found on the small skiff is to the effect that they were all fishermen who went out to sea to look for their big boat that had got lost. They had borrowed a small skiff for this purpose. The small skiff had encountered difficulties in the mid sea and had been repaired by those on the big skiff. The persons on the big skiff had also given them food. When their small skiff was being repaired it had been tied on to the big skiff. At a certain point while cooking they had thrown a metal with charcoal on it to the sea as it was too hot. After the skiff had been repaired they separated and were on their way to Somalia when two helicopters started firing at them and a naval ship arrested them.

31. Had the Learned Trial Judge considered and commented on the statements of the Appellants, which in our view is not fanciful or totally improbable, before rejecting them in their totality we could have a better understanding of the basis for the Trial Judge's statement at paragraph 77 of the judgment: "I attach no weight to the version of the

defence." We are of the view that the principle of a 'Fair Hearing' necessitates a consideration of the defence case. In the case of **Ahmed Abdi Barre and Mukhtar Tahobow Ga'al Criminal Appeal SCA 07/2013** this Court stated:

"We have to bear in mind that the Appellants were in a foreign land, being prosecuted and defended by foreigners under a legal system unfamiliar to them. Therefore extra care should have been taken in the manner the prosecution was conducted to ensure due process. In short the legitimacy of the verdict should involve fundamental respect for the court process. The quality of proceedings and not merely their product are central to judicial legitimacy. ***R. Dworkin in 'A matter of Principle (1986) p 72*** *states: "The criminal justice system is not merely about convicting the guilty and ensuring the protection of the innocent from conviction. There is an additional and onerous responsibility to maintain the moral integrity of the criminal process."*

32. In view of what has been stated above we allow the appeals of all 7 Appellants, quash their convictions and acquit them forthwith. We order that all 7 Appellants be repatriated to Somalia by the necessary authorities.

A.Fernando (J.A)

I concur:. **…….** M. Twomey (J.A)

I concur:. **…….** J. Msoffe (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on28 August 2015