

## REPUBLIC v ADEN

(2011) SLR 41

M Mulkerrins for the Republic

N Gabriel for the accused

### Sentence delivered on 28 February 2011 by

**GASWAGA J:** All ten accused, Nur Mohamed Aden (A1), Ali Mohamed Ali (A2), Abdi Ahmed Farah (A3), Farhan Yousuf Ali (A4), Jamal Mohamed Ali (A5), Bashir Khalif Hashi (A6) also known as 'Atomic', Mohamed Ahmed Ali (A7) also known as 'Lugadeere', Abdullahi Mohamed Hassan (A8), Abdifatah Ahmed Hassan (A9) and Abdi Rizak Mohamed Ali (A10), have been convicted on two separate counts of piracy contrary to section 65 of the Penal Code. The prosecution had proved that from 16 to 20 November 2010 the accused persons were forcefully in command of a Seychellois vessel the *Faith* and its seven member crew when they were intercepted by the Seychelles Coast Guard on their way to Somalia.

As submitted by the defence counsel in a plea of mitigation on behalf of the accused, this Court will be lenient to the accused and consider them as first offenders who are also relatively young and would need another chance to reform and rejoin society. It is noted that the bullet was fired through the roof of the the *Faith* and not directed at any person. Counsel had submitted that this was a sad case involving young people originating from a failed State (Somalia) which the international community has abandoned. Further, that the accused were used and became victims of unscrupulous people and war lords. Although the Court understands their situation at home this does not mean that the way out of it is piracy. Piracy has inflicted and continues to inflict pain and suffering onto humanity in different ways.

I wish to reiterate what I had stated in *Dahir* (supra) that:

For Seychelles, an archipelago that almost entirely depends on the surrounding waters of the Indian Ocean the effects of any insecurity at sea are far-reaching. There is no doubt that piracy activities in our waters have impacted adversely on a number of projects in the areas of tourism, fishing, transport and trade and investment on which a considerable percentage of Seychellois people depend. Piracy activities can also easily breed other evils such as drug and human trafficking as well as illegal fishing which in turn makes it too expensive for the Seychelles Government to patrol and protect its territorial waters.

Guidance on meting out a suitable punishment will also be sought from the sentencing pattern of this Court in similar cases-

(1) *Rep v Mohamed Dahir and ten others* Criminal Side No 51 of 2009-Having been detected and recorded on 5 December 2009 by a surveillance aircraft at the high seas, the accused had on the following day proceeded to attack and fire at the *Topaz*, a Coast Guard ship which they mistook for a passenger or cargo ship. There was neither damage caused to the *Topaz* nor injuries

inflicted to the crew. Each one of them was sentenced to ten (10) years in prison.

(2) *Rep v Abdi Ali & ten others* Criminal Side No 14 of 2010-The accused had on 5 March 2010 attempted to seize a ship *Intertuna II* and were twice repulsed. Smoke bombs were dropped from an aircraft onto the two skiffs and mother ship. Helicopters arrived and circled the three vessels. The accused were disarmed and arrested. The Court sentenced each of the accused persons to 6 years in prison.

(3) *Rep v Mohamed Aweys Sayid & eight Others* criminal Side No 19 of 2010-All the nine accused were convicted on the first count for illegal acts of piracy constituting of violence, detention and depredation for private ends which had been committed against persons on board another ship they had taken control of on 27 March 2010. On count 2, similar acts were occasioned on the occupants of a ship called *Galateon* 26 March 2010 while on the third count the accused unlawfully discharged firearms directed at the *Topazon* 29 March 2010. This case involved three different vessels attacked during the same transaction. A term of eleven (11) years was imposed on each accused on counts 1 and 2 with an order that they run consecutively. However, the ten years imposed on count 3 were to run concurrently with the twenty-two (22) years.

The Court takes note of the following factors as aggravating the seriousness of this offence. The accused intended to capture the vessel for a ransom. They had planned and coordinated the mission well; it was not accidental. Guns were used to threaten, harass and intimidate the Seychellois crew. Their personal effects were taken. Sonny Alcindor was made to carry heavy barrels of fuel while Delbyl Snard's hands and legs were tied with a rope. Dominic Malvina was slapped in the face. Most of the time the crew members were locked up in the sleeping quarters like prisoners and their life put at high risk especially when the shooting started. As a result, there was loss of human life and amputation of Nur Mohamed's (A1) left arm. Despite knowing the repercussions of piracy the accused went ahead to try their luck at this very lucrative yet risky business. In my view, this can only call for the imposition of a deterrent sentence upon such daring offenders.

However, unlike in the above cases, this was a complete piracy act where the innocent fishermen were under detention for a whole four days enroute to Somalia. A loud and clear message must be sent out to stop such offences from being committed. The maximum sentence prescribed is thirty years and a fine of 1 million rupees on each count.

I shall impose a suitable sentence of twenty (20) years on count one and ten (10) years on count two.

## **ORDER**

- (1) Since both offences were committed during the same transaction, the said sentences will run concurrently.
- (2) The period of ninety-eight (98) days spent on remand by the accused will count towards this sentence.

(3) Since most of the accused are minors, the prison authorities should make the necessary arrangements to detain each one of the accused persons in the right place in accordance with article 18(12) of the Constitution.

Right of appeal explained.