

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 73/2013

[2015] SCSC

THE REPUBLIC

versus

**ALI ABSHIR NUUR
HASSAN THALIL AHMED
FARAH ABDULLAHI ALI
MOHAMED ABDULLAHI MOHAMED
ABDISHAKUR YAHYE KHEYRE
MOHAMED BASHIR MOHAMED
HASSAN SIYAT FARAH
ABDIQADAR ABDI SALAN
ADAN ABDULLAHI BARISE**

Accused

Heard: 26th August 2014 and 17th February 2015
Counsel: Mrs. Shenaz Muzaffer, Assistant Principal State Counsel for the Republic
Mr. Nichol Gabriel Attorney at Law for the accused
Delivered: 13th March 2015

SENTENCE

Burhan J

[1] I have considered the plea in mitigation made by learned counsel for the defence.

- [2] Learned counsel has brought to the notice of court that the accused who have been convicted on all three counts are 1st offenders and several of them are family persons who have been away from their families for a considerable period of time. Further one of the convicted accused namely the 1st accused is a juvenile and according to the forensic report as admitted 17 years of age. Learned counsel has also brought to the notice of court that in instances where there was no actual injury or damage caused during the acts of piracy, courts have imposed less severe sentences than in instances where actual violence and damage has resulted. Cases referred to ***R v Abdi Ali & Ors and Mohammed Hassan Ali & Ors v The Republic CA 22/2012*** .
- [3] Whilst considering the factors in mitigation, court must also take into consideration the serious ramifications of the offence of piracy and also consider the far reaching consequences of such acts of piracy on the high seas. Piracy on the high seas has global and international repercussions. In addition to the dangers and risks to life, piracy has adversely affected the trading abilities of many States thus undermining and weakening the economies of countries.
- [4] No doubt in this case as pointed out by learned counsel for the defence no injuries were caused to anyone aboard the two vessels at the time of attack nor was any damage caused. Further this is not a case where the accused had taken the crew of another vessel as hostage and operated that vessel as a pirate vessel while committing other acts of piracy.
- [5] The use of a juvenile by the adult offenders in such violent acts of piracy is an aggravating factor which in my view should enhance the punishment to be meted out to the other adult offenders.
- [6] All nine accused have been convicted on all three counts. Count 1 is in respect of an act of piracy committed on M/V Zhongji 1, while count 2 is in respect of acts of piracy committed on M/V Torm Kansas. The 3rd Count is for voluntarily participating in the operation of a ship with knowledge of fact making it a pirate ship. Each of the three counts attract a maximum penalty of 30 years imprisonment and a fine of Seychelles Rupees I million. Further this court has the power to make each of the sentences run consecutively.

[7] Having considered the aforementioned facts, the seriousness of the offences and the background facts and circumstances of the case as borne out by the evidence and the mitigation plea of learned counsel for the accused, I proceed to pass sentence on the convicted accused as follows;

[8] Each of the convicted 2nd to 9th accused namely,

Hassan Thalil Ahmed, Farah Abdullahi Ali, Mohamed Abdullahi Mohamed, Abdishakur Yahye Kheyre, Mohamed Bashir Mohamed, Hassan Siyat Farah, Abdiqadar Abdi Salan, Adan Abdullahi Barise are sentenced as follows;

Count 1

Each to a term of 14 years imprisonment

Count 2

Each to a term of 14 years imprisonment

Count 3

Each to term of 14 years imprisonment

[9] I make order that these three terms of imprisonment run concurrently. Time spent in remand and detention i.e. from the 10th of November 2013 to be counted as part of the sentence.

[10] This court notes that one of the convicted accused namely the 1st accused Ali Abshir Nuur is 17 years of age and a juvenile. Having considered the possibilities in sentencing set out in section 94(1) of the Children's Act as amended by Act 7 of 2005, this court is of the view that the said alternatives referred to in section 94(1) cannot be reasonably applied, considering the serious nature of the offence and as the juvenile in this instant case is a foreign national and does not have parents or guardians residing within the Seychelles. Therefore this court proceeds to sentence the 1st accused Ali Abshir Nuur as follows;

Count 1

A term of 3 years imprisonment.

Count 2

A term of 3 years imprisonment.

Count 3

A term of 3 years imprisonment.

[11] I make order that these three terms of imprisonment run concurrently. Time spent in remand and detention i.e. from the 10th of November 2013 to be counted as part of the sentence.

[12] The prison authorities to be informed that the convicted juvenile must be kept in a separate place from any adult offender, while serving his term of imprisonment.

[13] This court makes order that all exhibits other than the personal belongings of the accused should be forfeited.

[14] Right of appeal explained to the accused.

Signed, dated and delivered at Ile du Port on 13 March 2015

M Burhan
Judge of the Supreme Court