

## IN THE SEYCHELLES COURT OF APPEAL

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

### Criminal Appeal SCA31- 37/2014

(Appeal from Supreme Court Decision 16/2013)

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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

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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 18<sup>th</sup> and 19<sup>th</sup> 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.

(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-

- (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-

