



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.20'A' OF 2020**

**FELIX BIBONIMANA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Felix Bibonimana, was convicted of the offence of **interfering with travel documents** contrary to **Section 8(A) of The Counter Trafficking in Persons Act No.8 of 2010**. The trial court concluded that the prosecution had established, to the required standard of proof beyond any reasonable doubt, that the Applicant had on 15<sup>th</sup> March 2019, at Fedex Courier Warehouse at Jomo Kenyatta International Airport Cargo Centre within Nairobi County, jointly with others not before court, received and confiscated travel documents, namely seven (7) Burudian passports in furtherance of trafficking in persons. The Applicant was fined Kshs.4,000,000/= or in default he was to serve three (3) years imprisonment. The sentence was meted out on 30<sup>th</sup> December 2019. He is serving the default custodial sentence after failing to pay the fine that was imposed.

The Applicant made an application before this court seeking to have the period that he was in remand custody taken into consideration in determining the default custodial sentence that he is to serve. During the hearing of the application, the Applicant pleaded with the court to exercise leniency on him. He stated that he regrets committing the offence and had learnt his lesson. During the period of his incarceration, he had undertaken various courses including that on HIV/AIDS and Peer Counselling. Prior to his conviction, he was a student at Nairobi Baptist College. His studies were disrupted when he was arrested and later charged with the offence that he was convicted of. He told the court that during his incarceration, his father had died. He was thus left with the responsibility of taking care of his siblings. He was married with children who depended on him. It was his prayer that the period he has been in prison be deemed to be sufficient punishment so that his sentence may be commuted to the period served.

Mrs. Nyauncho for the State opposed the Applicant's application for reduction of custodial sentence. She submitted that the trial court took into consideration the period that the Applicant was in remand custody when determining the sentence that was to be imposed on the Applicant. Taking into consideration that the offence that the Applicant was convicted of attracted a maximum custodial sentence of ten (10) years, the sentence of three (3) years imprisonment was extremely lenient in the circumstances. Learned Prosecutor reiterated that the trial court had taken into consideration the mitigation of the Applicant. She was of the view that the sentence that was imposed by the trial court should not be interfered with as it fitted the offence that the Applicant was convicted of.

The court has carefully considered the submission made by the parties to this application. When the trial court sentenced the Applicant, it was exercising judicial discretion. That discretion can only be interfered with by an Appellate Court, if it is established that the sentence was either harsh or extremely lenient that it did not serve the ends of justice. An Appellate Court can interfere with the sentence if it is proved that the same was illegal.

In the present application, it was clear to the court that the sentence meted on the Applicant was neither harsh nor illegal. **Section 8(A)** of the **Counter-Trafficking in Persons Act** provides for a punishment of a term of imprisonment of not less than ten (10) years, or a fine of not less than ten million shillings, or both. In that regard therefore, this court agrees with Ms. Nyauncho for the State that the sentence that was meted on the Applicant was lenient in the circumstances. The sentence fitted the crime. The trial court took into consideration the period of nine (9) months that the Applicant was in remand custody prior to his conviction. The trial court also took into consideration the mitigation of the Applicant. In fact, the trial court requested and obtained a pre-sentence report before it sentenced the Applicant.

In the premises therefore, this court will not interfere with the sentence meted on the Applicant by the trial court. As a consequence, the Applicant's application lacks merit. It is hereby dismissed. It is so ordered.

**DATED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JULY, 2020**

**L. KIMARU**

**JUDGE**