



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 18 OF 2020

PANG XIANGMIN alias XI CHUNGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against conviction and sentence in Garissa Chief Magistrate's

Court Criminal Case No. 346 of 2020 delivered by Hon. Cosmas M. Maundu (CM) on 11/6/2020)

JUDGEMENT

1. The appellant was convicted and sentenced to a fine of Ksh. 200,000 in default one-year imprisonment for offence of being unlawfully present in Kenya contrary to section 53(1) (j) as read with section 53(2) of Kenya Citizenship and Immigration Act No. 12 of 2011.
2. Particulars being that on 28/5/2020 at around 0730 hrs at Dadaab township within Daadab Sub-County, Garissa County, being a Chinese national, was found unlawfully present in Kenya without valid permits. He pleaded to the charge and thus convicted on own plea.
3. Being aggrieved by the aforesaid verdict he now appeals on grounds that sentence is harsh and excessive being a first offender, and repentant and remorseful and thus he didn't know he had committed the offence.
4. He pleads for mercy for court to order he be sent to his home country. In his mitigation he sought fine to be reduced from Ksh.400,000/- to Ksh.200,000/- but in his oral submissions he said he can only offer Ksh.50,000/-.
5. The prosecution left it to the discretion of court to weigh the factors and circumstances of the case and decide on what is suitable in the circumstances.
6. The appellant has already served 2 months imprisonment and is willing to pay Ksh.50,000/- to get repatriated rather than continue to suffer in prisons at this moment when the threat of Covid-19 is looming large globally and specifically in our overcrowded prisons.
7. The court considers the sentence for the offence attracts a maximum penalty of fine of Ksh. 500,000/- or 3 years imprisonment or both.
8. However, in view of the prevailing circumstances aforesaid and the fact that the appellant is a first offender, saved court's time by pleading guilty and that he was willing to pay Ksh.50,000/- to be released at this stage, it is prudent to offload the prisons burden of over crowding by releasing those with remaining sentences of less than 3 years spirit.
9. Thus, court makes the following orders:-

(i) The appellant shall pay a reduced fine of Ksh.50,000/- immediately and then be handed over to the Immigration via Police for repatriation.

(ii) In default of payment he will continue to serve the remaining period.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 29TH DAY OF JULY, 2020.

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C. KARIUKI

JUDGE