



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.529 OF 2020**

**ABDIRAHMAN AHMED MUUDE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Abdirahman Ahmed Muude, was convicted of four counts under the **Kenya Citizenship and Immigration Act** and the **Penal Code** in the **Chief Magistrate's Court at JKIA Court Criminal Case No.139 of 2019**. The charges emanated from events that occurred on 22<sup>nd</sup> August 2019, at Jomo Kenyatta International Airport, when the Applicant attempted to gain entry into the country using forged Kenya Passport and Identity Card. The Applicant was sentenced to serve two years imprisonment in respect of two of the counts, and four years imprisonment in respect of the other two counts. The two year sentences were ordered to run concurrently, while the four year sentences were to run consecutively. The Applicant is therefore serving a ten (10) year custodial sentence.

The Applicant made an application to this court seeking revision of the custodial sentence that was meted on him. His application was, in essence, coached in terms of a mitigation for reduction of the term of imprisonment that was imposed on him. He stated that he was a first offender; that the sentence that was imposed on him was harsh and excessive in the circumstances; that he was seeking leniency from the court and was willing, immediately, to be repatriated back to Somalia. He told the court that while in prison, he had become sick. He pleaded with this court to favourably consider his application.

Ms. Akunja for the State, while observing that the sentences were legal, however noted that the Applicant was not given an option to pay a fine. Learned Prosecutor was not averse to the custodial sentence of the Applicant being commuted to the period served. She urged this court to repatriate the Applicant to his country of origin.

When the trial court sentenced the Applicant, it was exercising judicial discretion. This court can only interfere, if it is established that the sentence was harsh and excessive that it did not serve the ends of justice. It can also be interfered with if the sentence is so lenient that it is an affront to the law. This court has jurisdiction to interfere with a sentence if it's found to be illegal, or where the wrong principle of the law was applied.

In the present application, it was clear to the court that, other than the failure by the trial magistrate to order that all the sentences run concurrently, the custodial sentences meted on the Applicant were legal. The Applicant faced serious charges that, taking into consideration the current circumstances, has security implications for this country. This court is not persuaded that the Applicant made a case for this court to interfere with the said sentences, other than direct that all the custodial sentences imposed on the Applicant shall be served concurrently, instead of consecutively. The Applicant shall therefore serve a term of four (4) years imprisonment from the date that he was sentenced by the trial magistrate i.e. 16<sup>th</sup> December 2019. It is so ordered.

**DATED AT NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2020**

**L. KIMARU**

**JUDGE**