



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL APPEAL NO. 83 OF 2017**

**MASHAKA MBOJE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence by Hon. L. MUTAI – Chief Magistrate dated 3<sup>rd</sup> July, 2017 in Nanyuki Chief Magistrate’s Court Criminal Case No. 823 of 2017)*

**JUDGMENT**

1. The appellant **MASHAKA MBOJE** was arrested and charged before the Nanyuki Chief Magistrate’s Court with the **offence of being unlawfully present in Kenya contrary to section 53(1)(i) as read with section 53(2) of the Kenya Citizen and Immigration Act 2011 (the Immigration Act)**.
2. The appellant pleaded guilty whereupon the trial court sentenced him to pay a fine of Kshs.100,000 and in default to serve 1½ years imprisonment. He has so far served 6 months of that sentence. Once that sentence is served the trial court ordered the appellant to be repatriated to Tanzania.
3. He filed his present appeal against that sentence and at the hearing of his appeal he only had one request: he wanted to return to his country of origin, Tanzania.
4. The appeal, to that extent, was not opposed by the learned counsel Mr. Tanui, the Principal Prosecuting Counsel.
5. I have considered the appeal against sentence. Section 53(2) of the Immigration Act provides that when one is convicted of unlawfully being present in Kenya he is liable to be fined an amount not exceeding Kshs.500,000, or imprisonment not exceeding three years or both.
6. The trial court in sentencing the had this to say:-

**“SENTENCE**

**The accused mitigation considered. Although first offender the offence is serious and a stern punishment called for. Accused fined Kshs.100,000 and in default to serve 1 ½ years imprisonment.”**

7. The purpose of passing sentence against a convicted person was stated in the case **REPUBLIC –V- JAGAN & ANOTHER [2001] KLR** to be:-

**“..... is usually to disapprove or denounce unlawful conduct as a deterrent to deter the offender from committing the offence, to separate offenders from society if necessary to assist in rehabilitation of offenders, and in retribution by providing reparation for harm done to victims in particular to society general. It is also seen as promoting a source of responsibility offender.”**

8. In my view the sentence of 6 months, so far served by the appellant, is sufficient to deter any other would be offenders. Because that is the finding of the court the appellant’s appeal against sentence will succeed to the extent of the custodial sentence.

9. In the end the judgment of the court is as follows:-

**(a) The custodial sentence of the trial court is set aside and instead the appellant is sentenced, in default of payment of the fine, to period already served.**

**(b) The appellant MASHAKA MBONJE shall forthwith be repatriated to Tanzania his country of origin.**

Orders accordingly.

**DATED AND DELIVERED AT NANYUKI THIS 31ST DAY OF JANUARY 2018.**

**MARY KASANGO**

**JUDGE**

**CORAM**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: Mashaka Mboje.....

For the State: .....

Language: .....

**COURT**

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**