



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 198 OF 2015

JURGEN REINERS..... APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

(i) That the plea herein is unequivocal

(ii) That the sentence is lawful

6. I have considered the rival submissions in this Appeal. My findings are as follows;

(i) I find that it is not clear what language the proceedings were conducted. The Coram shows;

Interpretation: English/Kiswahili

(ii) The Appellant who is a Germany National submitted through his Advocate that he does not understand English well. It was the duty of the court to organize for an interpreter and to ensure that the Appellant understood the charge he was facing.

(iii) I also find that the facts as given to the court by the prosecutor do not disclose an offence. This is what the trial court captured;

“Prosecutor: Facts are that on 16/11/2015 Immigration Officer Working on a tip off visited the Edge Pub & Restaurant in Mtwapa. They paused as customers and offered refreshments. It was brought/served item with the soft drinks - soda.

They thereafter engaged in a conversation if he had a work ticket.

They requested to see his passport. He produced a German passport. No (78511yj1. Upon perusing it, the officers found that the accused person came to Kenya through Moi International Airport on 6/7/2015.

He had a 3 months holding visa. The same was later extended for another three months from 6/10/2015 to be valid to 5/1/2016. On perusal the officers established that he was on holiday. A receipt of cash sales receipts numbered was captured from the passport. The accused should be on holiday.

He has no work permit. He was arrested and taken to Central Police Station”.

(iv) From the facts, this is not clear that it is the Appellant who served the refreshments. It is stated that:

“It was brought/served item with the soft drinks – soda”

I find that the facts are not clear. Is it the Appellant who served the drinks or it was someone else?

(v) I also agree that the punishment meted was excessive. The trial court ordered the Appellant to pay a fine of 400,000 or two (2) years jail and in addition to be repatriated yet he had a valid 3 months visa to be in the country.

(vi) I find that this Appeal has merit and I accordingly allow it and set aside both the conviction and sentence.

(vii) I further order that the Appellant's passport be released to him forthwith and his surety in the bail pending Appeal be discharged.

Dated, Signed and Delivered in Mombasa this 20th day of March 2018.

ASENATH ONGERI

JUDGE