

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL APPEAL NO 96 OF 2017

TUYIZERE THEOGERE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original Sentence dated 5/09/2017 in Nanyuki CM

Criminal Case No 1385 of 2017 – L Mutai , CM)

J U D G M E N T

1. The Appellant herein **TUYIZERE THEOGERE** is a national of Rwanda. On 5th September, 2017 he pleaded guilty to the offence of ***being unlawfully present in Kenya*** contrary to **section 53(1), (2) & (5)** of the ***Kenya Citizenship and Immigration Act, No 12 of 2011***. It was alleged in the particulars of the offence that on 3rd September, 2017 at about 22.00 hours at Naromoru Township in Kieni East Sub-County of Nyeri County, being a Rwanda citizen, he was found unlawfully present in Kenya by virtue of his entrance permit having expired on 1st August, 2017. He was sentenced to a fine of KShs 100,000/00 and in default of payment of serve 1 ½ years imprisonment. It was further ordered that the Appellant be repatriated back to his country Rwanda once he paid the fine or served the default sentence.

2. The Appellant has appealed only against the sentence, specifically the default term of imprisonment. That term of imprisonment is manifestly illegal. It should not have exceeded twelve months imprisonment. **Section 28(2)** of the ***Penal Code*** makes this abundantly clear.

3. The Appellant has now served just over one year of his default sentence. I will allow his appeal against the default sentence of 1½ years. It is hereby set aside. I will substitute therefore a default sentence of twelve (12) months, effective from the date of his original sentencing on 1st August 2017. The order of repatriation to his country Rwanda will remain. It is so ordered. Only to that limited extent is the appeal against sentence allowed.

DATED AND SIGNED AT NANYUKI THIS 2ND DAY OF AUGUST 2018

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 15TH DAY OF AUGUST 2018