

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

CRIMINAL REVISION NO. 169 OF 2017

JULIUS KAAWEESI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

I have considered the application for revision. Counts I and II relate to smuggling of human beings which are serious offences.

In sentencing the Applicant, the trial court took into consideration that he had saved court's time by pleading guilty. The magistrate however in addition to the fine imposed an additional mandatory custodial sentence. This in my view was harsh as in any event, the Applicant was a first offender.

In Count III, he was fined Kshs. 600,000/= in default to serve one year imprisonment against a possible fine of Kshs. 5 million in default serve 5 years imprisonment or both. This cannot be deemed as so harsh a sentence.

My view is that the Applicant has only been in prison for almost 2 months which is not sufficient period to serve as deterrence. He can renew his application after serving at least 6 months imprisonment.

But with regard to counts I and II, for the reason that he pleaded guilty and was a first offender, I hereby set aside the additional custodial sentence of 6 months imprisonment. All the other sentences remain undisturbed.

I am aware that the Applicant tendered a paid-up air ticket in mitigating this application. But this was done on a 'without prejudice' basis. He is advised to reserve the ticket until such a time, probably after six months, if he will succeed in the renewed application.

As at now, the application is declined save the setting aside of the additional sentences in counts I and II.

Dated and Delivered at Nairobi this 4th day of August, 2017

G.W. NGENYE-MACHARIA

JUDGE

In the presence of;

- 1. Applicant present in person*
- 2. M/s Sigei for the Respondent.*

