

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL REVISION 480 OF 2017

HADDAD SHAFIK.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Haddad Shafik, herein the Applicant, lodged the present application by a Notice of Motion dated 21st September, 2017 seeking a review of the sentence by reducing the fine imposed in **Kibera Criminal Case 3016 of 2017**. The Applicant set out the grounds that he admitted the charges leveled against him, that he was an old and frail man whose condition was rapidly deteriorating in prison, that he was willing to pay a lesser fine and return to his home country Israel, at his own cost. In a supporting affidavit sworn by himself he states that he was charged with obtaining credit by false pretences contrary to **Section 316(a) of the Penal Code** and also being in possession of counterfeit currency contrary to **Section 367(a) of the Penal Code**. That in the spirit of reconciliation he settled with the complainant the offence in Count I and the charges thereby were withdrawn. Further, he was convicted on his own plea of guilty in count II and was sentenced to pay a fine of Kshs.5,000,000/ million in default serve one year imprisonment. He averred that his health had deteriorated while in custody due to his advanced age; he is 80 years old. He urged the court to consider his age and health status and reduce the fine to an amount that he could afford. Further, that upon reducing the fine the court should then order his deportation to Israel He was willing to pay for his air ticket. He concluded by stating that such an order was in the interest of justice since the fine of Kshs. 5,000,000 was manifestly excessive considering that he was a first offender. Counsel for the Applicant, Ms. Abongo provided a letter from a Dr. Elie Mansour setting out the ailments afflicting the Applicant and the medication he needed to manage them.

Counsel for the Respondent, Ms. Atina acceded to the application submitting that the Applicant had demonstrated good will by settling Count I out of court. She submitted that the Applicant was a burden to the country and should be deported to Israel.

I have noted that the Applicant was charged under Section 367A of the Penal Code which relates to mutilation of currency notes whereas the offence stated in the charge sheet being of possession of counterfeit currency is provided under **Section 367 of the Penal Code**. This, however, is a technical error that does not affect the substance of the charge.

I have considered the respective submissions. The fact that the Appellant pleaded guilty is a clear indicator that he is cognizant of the mistake he made and has taken responsibility for the same. In light of the fact that being a foreigner he has offered to pay for his repatriation back to Israel this court is of similar view that his continued stay in prison is a liability to the country. After all, it is clear he will not be able to meet the hefty fine imposed. He is also ailing and can return to Israel to continue with his treatment.

I accordingly allow the application. I set aside the sentence imposed and substitute it with an order that the Appellant be forthwith set free. He shall be repatriated back to Israel at his expense. He shall be released to industrial Area Police Station, Immigration Department to facilitate the deportation. It is so ordered.

Dated and Delivered at Nairobi This 17th October, 2017

G.W.NGENYE-MACHARIA

JUDGE

In the presence of;

1. *Miss Abongo for the Applicant.*

2. *Miss Atina for the Respondent.*