



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.71 OF 2016**

**ADAMU AYANTO BABISO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Pursuant to Section 362 of the Criminal Procedure Code, the lower Court file has been forwarded to this court with a view to the court satisfying itself as to the correctness, legality or propriety of the lower court record in the Chief Magistrate's Court at Milimani Criminal Case No. 1623 of 2014. In that case, the Applicant herein was charged in count I, with being in possession and using a passport in which an endorsement had been forged contrary to **Section 54(1)(c) of the Kenya Citizenship and Immigration Act of 2011**. In count II, he was charged with being unlawfully present in Kenya contrary to **Section 53(1)(j) of the Kenya Citizenship and Immigration Act of 2011**.

When the Applicant was first presented in court on 17<sup>th</sup> November, 2014, he pleaded not guilty and a hearing date for the trial was set. On 29<sup>th</sup> August, 2015, he changed his mind and informed the court that he would plead guilty to the offences. He was accordingly convicted on his own plea of guilty. In count I, he was sentenced to a fine of Kshs. 500,000/= in default, serve one year in jail. In count II, he was sentenced to pay a fine of Kshs. 100,000/= in default serve two years in jail. The sentences were to run concurrently. They were passed on 31<sup>st</sup> July, 2015.

By an application filed in court on 17<sup>th</sup> February, 2015, the Applicant seeks a review of the sentence on ground that the same was excessive in the circumstances. He urged the court to take into account that he has been in remand since 17<sup>th</sup> November, 2014 the date of his arrest.

I have accordingly considered the application. The Applicant herein having been arrested on 17<sup>th</sup> November, 2014 has been in remand for almost one and a half years. Although the sentences were legal, I take into account that he was a first offender and in any event will have to be repatriated to his home country Ethiopia. It is then only fair that the sentence be revised in his favour. It is the view of this court that he has served sufficient punishment.

In the end, I set aside the sentence imposed and order that the Applicant be and is hereby forthwith set free. He shall however be repatriated to his home country Ethiopia.

**DATED and DELIVERED this 26<sup>th</sup> day of April, 2016**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

***The Applicant in person.***

***M/s Akuja for the Respondent.***