



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL REVISION NO.70 OF 2016**

**MASEREKA OSMAN YAHAYA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant herein was charged with four counts as follows:

**Count I:** Stealing contrary to Section 368(1) as read with Section 275 of the Penal Code.

**Count II:** Being in possession of papers or implements of forgery contrary to Section 367(a) of the Penal Code.

**Count III:** Preparation to commit a felony contrary to Section 308(2) of the Penal Code.

**Count IV:** Being unlawfully present in Kenya contrary to Section 53(1)(j) as read with Section 53(2) of the Kenya Citizenship and Immigration Act No.12 of 2011.

He was convicted in the four counts and in count I, was sentenced to pay a fine of Kshs. 30,000 in default serve four months imprisonment, in Count II, a fine of Kshs. 100,000/= in default 12 months imprisonment whilst in count III and IV a fine of Kshs. 200,000/= each in default 12 month imprisonment respectively. All the sentences were to run concurrently. It was further ordered that upon serving the sentence, he be repatriated to his country. The sentence was passed on 7<sup>th</sup> October, 2015.

By a Chamber Summons application filed in court on 17<sup>th</sup> February, 2016, he prays that the sentence be reviewed on ground that the same was excessive. In his Supporting Affidavit sworn on 8<sup>th</sup> February, 2016, he depones that the trial magistrate failed to consider that he was a first offender and that he had been in remand for one year and two months prior to the sentencing. The application is brought pursuant to Section 362 of the Criminal Procedure Code and it is prayed that the court calls for and examines the lower court record vide Chief Magistrate's Court at Milimani Criminal Case No. 1147 of 2014 so as to satisfy itself as to the legality, correctness or propriety of the sentence passed.

I have accordingly considered the application. The sentences as passed were legal. However, taking into account that the applicant was a first offender, had already served one year and two months in remand, and would, in any case, be repatriated to his country, I think it is only justiciable to review the sentence in his favour. Having been sentenced on 7<sup>th</sup> October, 2015, I conclude that he has already served sufficient

punishment. In the result, I substitute the respective sentences with an order that the applicant be and is hereby forthwith set free. He shall be repatriated to his home country Uganda.

**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.*