



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO. 69 OF 2016**

**RASIMA ALAMU ALAMAYO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant herein was charged in the Chief Magistrate's Court at Milimani in Criminal Case No. 765 of 2014 with the offence of making a false document contrary to Section 347(f) as read with Section 349 of the Penal Code. In Count II, he was charged with uttering a false document contrary to Section 353 of the Penal Code. In Count III he was charged with being unlawfully present in Kenya contrary to Section 53(1)(j) as read with section 53(2) of the Kenya Citizenship and Immigration Act of 2011. He was tried, found guilty and convicted accordingly. He was sentenced to pay a fine of Kshs. 100,000/= in each of the counts in default serve 6 months imprisonment respectively. The sentences were to run consecutively. The sentence was passed on 23<sup>rd</sup> January, 2015.

Pursuant to Section 362 of the Criminal Procedure Code, the lower Court record has been forwarded to this court with a view to the court satisfying itself as to the correctness, legality or propriety of the sentence passed. By a Chamber Summon application filed on 17<sup>th</sup> February, 2016, the applicant prays that the sentence be reviewed to a non custodial one. In his Supporting Affidavit sworn on 8<sup>th</sup> February, 2016, he alludes that he cannot pay the excessive fine imposed and was remorseful as he was arrested as he tried his luck to go to South Africa for greener pastures to enable him support his family which comprises two children and a wife.

I have accordingly considered the application. The sentence passed was legal but taking into account that the applicant was a first offender, and had been in remand for 7 months prior to the sentencing, and will in any event be repatriated, it is my view that he has served sufficient sentence.

In the result, I set aside the sentence and substitute it with an order that the applicant be and is hereby forthwith set free. He shall 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:**

1. *The Applicant in person.*
2. *M/s Akuja for the Respondent.*

