



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.81 OF 2015**

**TESFAYE GIRMA ARAM.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant was charged alongside another in the Chief Magistrate's Court at Nairobi in Cr. Case No. 1769 of 2014. In his respect, he was charged in count I with the offence of possessing and using a passport in which a visa has been forged contrary to Section 54(1)(c) of the Kenya Citizenship and Immigration Act of 2011. It was alleged that on 8<sup>th</sup> December, 2014, at Jomo Kenyatta International Airport within Nairobi County being an Ethiopian National and holder of Ethiopian passport No. [particulars withheld] was found possessing and using a passport with a forged Mozambique Visa endorsed on page 8 of the said passport while departing Kenya to Maputo-Mozambique aboard Kenya Airways Fright KQ740.

The Applicant was convicted on his own plea of guilty. He was fined Kshs. 500,000/= in default serve 24 months imprisonment. Upon payment of his fine, or serving the jail term, he was to be repatriated to his home of origin.

The applicant has come to this court by way of a Chamber Summons filed on 17<sup>th</sup> June, 2015 seeking a revision of the sentence imposed. He pleaded that the sentence was harsh as he could not afford the fine. Since his arrest he has been in prison for one year and two months. He urged the court to be merciful to him as he had a family that was relying on him in Ethiopia. On behalf of the Respondent, learned State Counsel Ms. Sigei did not oppose the application as long as the Applicant would cater for his repatriation costs back to Ethiopia.

I have accordingly considered the application and the respective submissions. The application is brought pursuant to Section 362 of the Criminal Procedure Code so that the court can satisfy itself as to the correctness or legality of the sentence passed and the propriety of the trial court proceedings. Any person who is convicted for the offence provided under Section 54(1)(c) of the Kenya Citizenship and Immigration Act, 2011 shall be liable under Sub-section (2) to a fine not exceeding 5 million shillings or to imprisonment for a term not exceeding 5 years or to both. It follows then that the sentence imposed against the Applicant was not only legal but reasonable in the circumstances. I however take into account that the Applicant having been presented to court for plea on 11<sup>th</sup> December, 2014 has been in the prison for one year and six months. He is therefore almost to complete his sentence. He was unable to pay the fine imposed which means that even if the application is not allowed he shall still not afford to pay a commensurate fine to the balance of the jail term. On considering that he shall be repatriated anyway, it is only fair that the application be considered positively.

In the result, I allow the application, I set aside the penalty imposed and substitute it with an order that the Applicant has served sufficient punishment and is hereby set free unless otherwise lawfully held. He shall be repatriated back to Ethiopia at the cost of the State. It is so ordered.

**DATED and DELIVERED in Nairobi this 31<sup>st</sup> day of MAY, 2016**

**G.W. NGENYE-MACHARIA**

**JUDGE**

***In the presence of:***

Applicant in person.

M/s Aluda for the Respondent.