

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 87 OF 2015

ADUPA FELIX ONGWEN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application herein is for review of the sentence imposed on the Applicant. He was charged in the Chief Magistrate's Court at Kibera in **Criminal Case NO. 1992 of 2015** with three counts; giving false information to a person employed in the Public Service contrary to **Section 129(a) of the Penal Code**, engaging in journalism profession in Kenya without authority by way of work permit Contrary to **Section 53(1)(m) and (2) of the Kenya citizenship ad Immigrating Act No. 2 of 2011** and with being unlawfully present in Kenya contrary to **Section 53(a)(i) and (2) of the Immigration**. He was convicted on his own plea of guilty. In count I, he was fined Kshs. 50,000/= in default serve six months imprisonment. In counts II and III, he was fined Kshs. 100,000/= each in default serve one year imprisonment respectively. In addition, he was to be repatriated to his home country upon either paying the fine or serving the default sentences. The sentence was passed on 22nd May, 2015.

In his application, the Applicant prayed for leniency stating that he is a family man with young school going children and that his wife who lives in Uganda is jobless. The application was not opposed by the Respondent save that Learned State Counsel, Miss Nyauncho submitted that the Applicant should be repatriated.

The Applicant has so far served one year one month jail term. He is not able to afford the fine. It no longer serves justice for him to be remanded in prison at State expense whereas he cannot afford the fine. The jail term served is already sufficient punishment.

In the end, I set aside the remaining sentence and substitute it with an order that the Applicant has served sufficient punishment. I order that he be and is hereby forthwith set free. He shall, immediately upon his release, be repatriated back to Uganda. It is so ordered.

DATED and DELIVERED this 28th day of **JUNE, 2016.**

G.W. NGENYE-MACHARIA

JUDGE

In the presence;

1. *Applicant in person.*
2. *Miss Ngetich for the Respondent.*