



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**REVISION NO. 42 OF 2016**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**RASHID HUSSEIN KOJIRA..... RESPONDENT**

*(Revision from the Conviction of the Chief Magistrate's Court at Nakuru, Hon. E. Kelly– Resident Magistrate delivered on the 9<sup>th</sup> day of March 2016 in Cr. Case No. 803 of 2015)*

**RULING**

The accused herein **RASHID HUSSEIN KOJIRA** was on 10/4/2015 charged before the Nakuru Chief Magistrate's Court with the offence of **BEING UNLAWFULLY PRESENT IN KENYA** contrary to Section 53(I) (J) of the **KENYA CITIZENSHIP AND IMMIGRATION ACT, 2011, LAWS OF KENYA**. The accused initially pleaded 'Not Guilty' to the charge.

However on 9/3/2016 when the matter came up before **HON. E. KELLY - Resident Magistrate** the accused changed plea to one of 'Guilty'. He was dealt with procedurally and was sentenced to a fine of Ksh 50,000/= in default to serve six (6) months imprisonment. The court also directed that the applicant be deported back to Somalia upon completion of his sentence.

When the accused completed his sentence he was handed over to the Immigration Department for the deportation order to be carried out. By way of their letter dated 30/9/2016 and filed in this court on even date, the officer in charge of Immigration, South Rift Region has notified the court that upon further enquiry it has emerged that the accused is in actual fact a Kenyan Citizen. They seek a review of the deportation order.

I have perused the documents annexed to that letter. They include copies of the accused's finger-prints as well as a letter dated 14/7/2016 confirming that the accused is a bonafide Kenyan Citizen from the Rendile Community. Based on the documentation annexed, it is clear that despite his guilty plea the accused is not in Kenya unlawfully.

In the circumstances, I do exercise the High Court powers of review granted under Section 392 of the Criminal Procedure Code and I hereby set aside the Deportation Order made by the trial court on 9/3/2016. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated in Nakuru this 30<sup>th</sup> day of September 2016.**

**Maureen Odera**

**Judge**