



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL REVISION NO.175 OF 2016

ABIMBOLA JUSTUS OYELEYE ALIAS

JUSTUS ABIMBOLA OGOLA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The lower court proceedings in **Milimani Cr. Case No. 1366 of 2016**, has been forwarded to this court so that the court can satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded on past, and as to the regularity of any proceedings in the file. The application is brought pursuant to Section 362 of the Criminal Procedure Code. The applicant filed a chamber summons application dated 23rd September, 2016 in which he requests for revision of the sentence imposed. He was fined a total of Kshs. 700,000/= which he states is unaffordable to him. He is remorseful for what happened indicating that he was misled by a friend who illegally registered him as a Kenyan to come and play football in the country. He has been in remand for two years.

The original record shows that he was charged with four counts as follows:

Count I: Presenting a forged document for the purpose of obtaining passport contrary to Section 54(1)(g) of the Kenya Citizenship and Immigration Act, 2011 Laws o Kenya.

Count II: Presenting a forged document for the purpose of obtaining passport contrary to Section 54(1)(g) of the Kenya Citizenship and Immigration Act, 2011 Laws of Kenya.

Count III: Making a false declaration contrary to Section 54(1)(a) as read with Section 54(2) of the Kenya Citizenship and Immigration Act, 2011.

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, 2011, Laws of Kenya.

Count V: Failure to register as a foreign national contrary to Section 56(2) as read with Section 56(3) of the Kenya Citizenship and Immigration Act 2011, Laws of Kenya and Regulation 46 thereto.

In counts I to III, he was sentenced to pay a fine of Kshs. 200,000/= each in default serve 6 months imprisonment respectively and in counts IV and V, a fine of Kshs.100,000/= each in default serve 6

months imprisonment respectively. Sentences were to run consecutively. In addition, he was to be repatriated to his home country, Nigeria upon serving the sentences. The sentence was passed on 9th September, 2016.

I have noted that the sentences passed were legal. The Applicant committed the offences on 6th September, 2016 and was arraigned in court on 7th September, 2016. He was convicted on his own plea of guilty. He has therefore in custody for only two months and not two years as he stated. The offences for which he was charged are serious. However, since the magistrate ordered for his repatriation, I do not think it is prudent that he continues being in prison at the tax-payers expenses when he cannot afford the fines. After all, he shall still be repatriated upon completion of the sentence. It is therefore in public interest that I shall revise the sentence.

In the result, I set aside the sentences imposed and substitute them with an order that the Applicant has served sufficient sentence and is hereby forthwith set free. He shall be handed over to the Immigration Department for repatriation back to his home country, Nigeria. It is so ordered.

DATED and DELIVERED this 16th day of November, 2016.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

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