



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL REVISION NO. 176 OF 2016**  
**OLANREWAJU JOHNSON OYELEYE ALIAS**

**JOHNSON AOLAREWAJU OGOLA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Pursuant to Section 362 of the Criminal Procedure Code, the original court record in Milimani Cr. Case No. 1365 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 Applicant was charged with five 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.**

The Applicant was convicted on his own plea of guilty. In Counts I to III he was sentenced to pay a fine of Kshs. 200,000/= each, in default serve 6 months imprisonment respectively. In Counts IV and V, he was sentenced to pay 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 9<sup>th</sup> September, 2016.

I have noted the relevant law and all the sentences passed were legal. The Applicant committed the offences on 6<sup>th</sup> September, 2016 and was arraigned in court on 7<sup>th</sup> September, 2016. He was convicted on his own plea of guilty. He was 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, the court does not find it prudent that the Applicant should continue 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 should 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 16<sup>th</sup> day of November, 2016.**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

*Applicant in person*

*M/s Akuja for the Respondent.*