



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL REVISION NO. 20 OF 2014**

REPUBLIC ..... APPLICANT

VERSUS

FADAI IDI ISMAEL .....RESPONDENT

**RULING**

This matter first came before me by way of an application for revision dated the 5th day of May, 2014.

In that application the orders sought were for the Court to satisfy itself whether it was correct, legal and proper for the learned trial magistrate in Criminal Case Number 709 of 2014 to have discharged the Accused unconditionally pursuant to Section 35(1) of the Penal Code, whereas the Accused had been charged under the citizenship and immigration Act number 12 of 2013.

The Court was also required to make a determination whether the fact that the report of findings dated 1st May, 2014 by OCS Changamwe, the observations contained therein and the conclusion were properly considered by the trial magistrate.

Lastly, the Court was asked to review and set aside the orders made on 2nd May, 2014 and grants further orders as it deemed fit and just.

The revision application was heard interpartes and this Court rendered its ruling on 13th June, 2014 and made orders for the deportation of the Accused to his motherland upon finalization of his other case/cases.

In Criminal case number 845 of 2014 the Accused was arraigned in Court on the 5th day of May, 2014 and he was charged with forgery contrary to Section 352(a) as read with Section 349 of the Penal Code and uttering a false document contrary to Section 353 of the Penal Code.

He pleaded not guilty to the charges and there being no objection to bail, he was ordered to be released on a bond of Ksh. 300,000/= with one Kenyan surety and further to deposit his passport.

Subsequently and before he could be released he was arraigned in Court on 9th May, 2014 where the charges were substituted and an additional Accused person was introduced. The Accused was now charged with the offence of giving false information contrary to Section 129(a) of the Penal Code.

**Count 2.** Possession of a Visa of Kenya intended to be used for purposes of remaining in Kenya contrary to Section 54(1) (l) as read with Section 54(2) of the Citizenship and Immigration Act number 12

of 2011.

**Count 3.** Fabricating evidence contrary to Section 113(a) and (b) of the Penal Code.

**Count 4.** Fraud contrary to Section 127(1) and 2 of the Penal Code.

**Count 5.** Conspiracy to commit a felony.

The Accused pleaded not guilty to the charges. The prosecution objected to the release of the Accused on bond and gave the reason that the Accused had previously been charged under Criminal Case number 709 of 2014 for being in the country illegally. That he was a flight risk. He has no fixed abode in the country.

The Court made an order to the effect that bond would not be granted at that stage and ordered for a mention on 26th June, 2014. It is this order of the learned trial magistrate that the Court is being asked to revise.

Section 362 of the Criminal Procedure Code gives the High Court the power to call for records and is framed thus,

***“The High Court may call for and examine the record of any Criminal proceedings before any subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, Sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate Court”.***

It is instructive to note that the learned trial magistrate did not specifically make a finding as to whether the Accused was to be released on bond or not but did reserve his ruling on the matter for 26th June, 2014.

He has not delivered a ruling for this Court, to interfere with. The only problem is that the date of 26th June, 2014 seems a bit far bearing in mind the liberty of the Accused. A perusal of the original file shows that the case is fixed for hearing on 11th August, 2014.

Bearing in mind that there are orders for the deportation of the Accused upon finalization of his case its only fair that this case be fast tracked and be given priority on hearing and determination within the shortest and reasonable duration and not exceeding six (6) months.

Ruling delivered dated and signed this **30th** day of **May, 2014**.

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**M. MUYA**

**JUDGE**

**30TH MAY, 2014**

**In the presence of:-**

Learned Counsel for the State Mr. Kiprop

Court clerk Musundi