

IN THE HIGH COURT OF KENYA

AT NAKURU

REVISION NO. 10 OF 2014

NASTEHA MOHAMED ALI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION ORDER

This file has been placed before me for purposes of revision pursuant to this court's supervisory powers under **Article 165(6)** of the **Constitution** and **Section 364** of the **Criminal Procedure Code**.

Nasteha Mohamed Ali was charged with the offence of being illegally in Kenya contrary to **Section 53(1)(j)** as read with **Section 53(2)** of the **Citizenship and Immigration Act No. 12 of 2011**. The particulars of the charge are that on 7/5/2014 at Rumuruti, within Laikipia County, was found being in Kenya illegally or without any documents to allow her to be in Kenya. In the alternative, she was charged with the offence of failing to register contrary to **Section 14(1)(a)** of the **Registration of Persons Act Cap 107, Laws of Kenya**.

She denied the first charge but pleaded guilty to the alternative charge of failing to register as a Kenyan and a plea of guilty was entered. However, before sentence, the magistrate noticed that **Section 14(1)(a)** of the **Registration of Persons Act** cannot be an alternative to a charge of one being illegally in Kenya under the **Citizenship & Immigration Act** and that is when the magistrate forwarded the file to this court.

I do agree with the trial court's observation that the alternative charge to which the accused pleaded guilty cannot be an alternative to a charge of being illegally present in Kenya. For that reason, I quash the conviction. I hereby send the file back to Nyahururu Court for the plea to be taken afresh before a different magistrate other than A. Mukenga, Resident Magistrate. It is so ordered.

DATED and DELIVERED this 23rd day of May, 2014.

R.P.V. WENDOH

JUDGE