



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HCCRA NO. 35 OF 2013**

*LESIT, J*

**SIRAJ KADIR ASABA.....1<sup>ST</sup> APPELLANT**

**MUSA MOHAMED BAKAW.....2<sup>ND</sup> APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The two Appellants were charged before the Principal Magistrate Moyale with three counts. In counts one and two each Appellant was charged with forgery contrary to section 349 of the Penal Code. In count 3 both Appellants were jointly charged with entering Kenya without a valid pass or permit contrary to section 34 (j) as read with section 53 (1) (j) and (2) of the Kenya Citizenship and Immigration Act. They pleaded guilty to the charge and were each sentenced to five months imprisonment. From the record of the lower court file, I see three pieces of documents which are annexed. One is an exhibit memo form to the Commissioner for Refuge affairs forwarding Movement Passes marked C and D in the names of the Appellants and was seeking information whether the two documents were forgeries. The other two documents are the movement passes. There is also a letter from the Commissioner of Refuge Affairs addressed to the Kenya Police Moyale Division Police informing them that the two passes were forgeries.

When this application came for hearing the Appellants did not challenge their conviction both stated that they had not valid entry passes to enter Kenya and they urged the court to give them an option of fine and to allow them to return to their county.

Mr. Moses Mungai for the State did not oppose the Appeal against the sentence.

A person convicted of an offence of forgery under section 349 of the Penal Code is liable to imprisonment for 3 years. A person convicted of entering Kenya without a valid pass or permit contrary to section 53 (1) (j) (2) is liable to a fine of Ksh.500,000/- or to imprisonment for 3 years or to both. The Appellants were sentenced to 3 years imprisonment in each count sentences ordered to run concurrently an order was also made for their repatriation to their country of origin.

I have considered the Appellant plea for an option of a fine in lieu of imprisonment term. This Appeal is unopposed by the state. I had the opportunity to see the Appellants I have noted they are young persons. I have also noted from the records that they were first offenders. They were sentenced to 3 months imprisonment on 10<sup>th</sup> June, 2013 with remission they would have served the sentence and by 10<sup>th</sup> of August 2013 which is approximately two weeks from today. They have therefore served a substantial part of the sentence. In the result I will allow the Appeal by reducing their sentence to the period served. I will however confirm the order for repatriation and order that they should be held in custody for a reasonable time to facilitate their repatriation back to their country of origin.

**SIGNED AND DELIVERED AT MERU THIS 25<sup>TH</sup> DAY OF JULY 2013.**

**J. LESIIT**

**JUDGE**