



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**HIGH COURT CRIMINAL REVISION NO. 6 OF 2012**

ABDI AZIZ SALAO *alias* LIQE ADAN .....APPLICANT

VERSUS

REPUBLIC .....RESPONDENT

**R U L I N G**

1. The applicant **Abdi Aziz Salao alias Liqe Abdi Adan** was convicted and sentenced for the offences of knowingly being in possession of a passport for which he could not give a proper account contrary to **Section 54(1)(d)** of the **Kenya Citizenship and Immigration Act 2011** and of being unlawfully present in the country contrary to **Section 53(1)(i)** of the **Kenya Citizenship and Immigration Act**.
2. He was fined Kshs.600,000/= in default to serve 1 year imprisonment in count I, and Kshs.100,000/= in default to serve 6 months imprisonment in count II. The conviction followed his own plea of guilty.
3. In his submission argued on the 15<sup>th</sup> February 2012 he did not contest the conviction. He however pleaded for the court's mercy on sentencing telling the court that he is a man of meagre means and cannot raise the fine imposed. Further that the passport that got him into trouble was given to him by brokers in this country. All he was trying to do was to reconnect with his family in the USA.
4. The learned State Counsel Mr. Mulati in opposing the appeal, drew the court's attention to the fact that the appellant was convicted on his own plea of guilty, is serving a lawful sentence, and that in fact, the sentence imposed was quite lenient considering that, the sentence provided by law in count I a fine of Kshs.5 million, in default five years imprisonment, while the sentence provided in count II is a fine of Kshs.500,000/= or three years imprisonment.
5. I respectfully agree with the learned State Counsel on all three grounds. In imposing fine during sentencing, the courts do not ordinarily consider the financial circumstances of the offender. The fine imposed will be as provided by law, and is usually tailored to fit the offence not the offenders pocket.
6. I do agree with the learned State Counsel Mr. Mulati that, the court in sentencing the appellant was quite lenient, because the law provides that both the fine and a custodial sentence may be handed to the offender simultaneously. In this case the appellant did not receive the second limb of the sentence which would have been custodial sentence, without option of fine, while the fine that was imposed cannot be termed harsh or excessive.
7. For the foregoing reasons I decline to interfere with the sentence as imposed by the learned magistrate. I dismiss the appeal.

**SIGNED DATED** and **DELIVERED** in open court this **8<sup>th</sup>** day of **March 2012**.

**L. A. ACHODE**  
**JUDGE**