



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 56 OF 2012**

**SAM SAM BASHE MOHAMUD .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. The Applicant **Sam Sam Bashe Mohamed** was convicted on his own plea of guilty for knowingly possessing and using a forged passport contrary to **Section 54(1) (c)** of the **Kenya Citizenship and Immigration Act 2011** in count I, and being unlawfully present in the country contrary to **Section 53(i) (j)** of the **Kenya Citizenship and Immigration Act of 2011** in count II.
2. Upon conviction the learned trial magistrate fined the applicant Kshs.500,000/= in default to serve 12 (twelve) months imprisonment in count I and Kshs.100,000/= in default to serve 6 (six) months imprisonment in count II.
3. The applicant being dissatisfied with the conviction and sentence filed an appeal, and while appeal is still pending the applicant has come to court seeking bail pending the hearing and determination of the said appeal.
4. Mr. Wamalwa, learned counsel for the applicant submitted that the applicant was arrested on 20<sup>th</sup> November 2011 thereby being held beyond the constitutionally provided period.
5. The learned counsel also submitted that the applicant's appeal has overwhelming chances of success because the applicant is 18 years of age and in counsel's opinion he should have been tried as a juvenile. Secondly that there was no communication between the applicant and the court because there was no interpretation.
6. Learned state counsel Mr. Mulati, opposed the application on behalf of the respondent. On the issue of the delay in arraigning the applicant after his arrest the learned state counsel stated that the applicant was arrested on a Sunday and taken to court on a Tuesday, and that therefore, the delay was not inordinate.
7. I have considered the submission from both sides. The applicant's remedy lies elsewhere and not in the nullification of the case at hand, or in the quashing of the conviction.
8. On the issue of the age, the learned counsel for the applicant gave the applicant's age as 18 years. I therefore agree with learned state counsel Mr. Mulati that the proceedings were in order. The age of 18 years is the age of majority in our country.
9. Lastly on interpretation, the record shows that interpretation was from English to Somali languages. The court interpreter is indicated as Mr. Muhidin. I note from the record that the applicant pleaded guilty, and admitted the facts as true. She pleaded for leniency in mitigation and never raised any complaint about language.

**10.** Considering all the submissions from the appellant and respondent, I find that the applicant has not demonstrated any exceptional circumstances, nor that her appeal has overwhelming chances of success, to warrant the granting of the application.

**11.** I therefore decline to grant the prayers sought. The application is dismissed.

**SIGNED DATED** and **DELIVERED** in open court this **26<sup>th</sup>** day of **April 2012**.

**L. A. ACHODE**

**JUDGE**