



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

REVISION CASE NO. 22 OF 2012

JULIEN VINCENT PETERS.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

The applicant, **JULIEN VINCENT PETERS**, was convicted for the offence of being in Kenya illegally contrary to **Section 53 (1) (j) of the Kenya Citizenship Act, No. 12 of 2011**.

The trial court then sentenced him to a fine of KShs.500,000/-.

As he was a first offender, and also because he was very remorseful, the applicant felt that the sentence handed down to him was excessive. Indeed, he described the said sentence as being contrary to the law.

Having pleaded “Guilty” to the charge, and because he had only forgotten to renew his status, the applicant believes that the trial court ought not to have imposed on him the maximum penalty.

By imposing the fine of KShs.500,000/- the trial court is said to have acted in contravention of **Articles 14 and 15 of the Constitution**.

The applicant also said that because he was married to a Kenyan citizen, he was entitled to some basic rights, by virtue of the said marriage.

Mr. Ondieki, the learned advocate for the applicant, submitted that the applicant was an honest man, who pleaded guilty. The applicant had entered the country lawfully, after being given a visa.

I believe that the said submission was intended to justify the applicant’s contention that it was simply due to an inadvertent error of omission, that he failed to have his visa renewed.

Ms Mwanza, learned state counsel, submitted that the sentence was legal.

In any event, the applicant had failed to provide this court with any document to prove that he was married to a Kenyan.

The court then asked the applicant about the date when his visa expired. He said that the visa had expired on 16th December, 2011.

Considering that the applicant was not arrested until 6th March 2012, the court sought to know why the applicant had waited that long before taking steps to have his visa renewed.

To my mind, if the applicant had been arrested a few days after his visa had expired, it would be easy to

appreciate his explanation that the failure to renew it was inadvertent.

But in this case, it transpired that the applicant was unable to retrieve his passport from the hotel where he had been staying, because the passport was pledged as some form of security to the hotel, for the bills which the applicant had incurred.

When this court asked the applicant how much he owed to the hotel, his answer was that the outstanding bill was KShs.279,000/-.

However, the applicant also said that his wife had subsequently negotiated with the hotel to release the applicant's passport on 29th March 2012.

The applicant's wife was supposed to have the visa renewed, and also to have the outstanding bill settled in full.

From the above facts, it is obvious to me that the failure to renew the visa was not due to inadvertence. The applicant could not renew the visa because he had failed to make payments due to the hotel where he was staying.

Secondly, even after the respondent pointed out that the applicant had failed to exhibit his marriage certificate; and notwithstanding the fact that this court gave the applicant an opportunity to exhibit the said marriage certificate, no such certificate was made available to the court. Instead, the advocates for the applicant provided the court with photographs allegedly showing the marriage ceremony between the applicant and Halima Abdillahi Mohammed.

I note that when the applicant took his plea before the trial court, he offered the following explanation for not having legal authority to remain in Kenya;

“I entered Kenya but due to ignorance and negligence I did not extend my visa. I ask for leniency.”

For one to be deemed ignorant of the need to extend or renew his visa implies that he was not aware that he was required to do so. Of course, it is possible for one to be ignorant of the said need, but it is highly improbable. I say so because a visa would normally indicate clearly, on the face thereof, how long it would remain valid.

But even assuming that the applicant was ignorant of the need to renew his visa, how then does he expect this court to believe that his failure to extend the visa was due to inadvertence?

Inadvertence connotes knowledge of what needed to be done, but then unintentionally failing to do it.

In effect, this court cannot still determine whether the applicant failed to renew his visa due to ignorance or inadvertence. He does not appear to be a straight forward person.

That notwithstanding, he is said to be a first offender. Ordinarily, unless there are some factors that aggravate an offence, the first offender should not be given the maximum sentence.

The learned trial magistrate did not give any reasons for imposing the maximum penalty, which he described as a “deterrent sentence.”

For that reason alone, I now set aside the fine of KShs.500,000/-.

In lieu thereof, and after taking into account the fact that the applicant has already been in prison for one month (out of the 6 months default imprisonment), I order that the applicant shall pay a fine of KShs.200,000/-. In default, the applicant would serve six (6) months imprisonment, calculated from the date when he was convicted i.e. 7th March 2012.

For the avoidance of any doubt, it is only the sentence which has been revised. The other orders made by the learned trial magistrate shall remain in force.

Dated, Signed and Delivered at Nairobi, this 12th day of April, 2012

.....
FRED A. OCHIENG
JUDGE