



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

Revision Case 22 of 2012

HAMZA MOHAMED MAYER.....APPLICANT

- VERSUS -

REPUBLICRESPONDENT

(From the original conviction and sentence in Criminal Case no. 1152 OF 2012 of the Chief Magistrate's Court Mombasa – J. Omburah – SRM)

RULING

26.4.2012

Before Lady Justice G. Nzioka

Court clerk – Philip

Mr. Hamza – for Applicant

Mr. Gioche for Respondent

Court – The matter herein has been brought to the knowledge and notice of the court vide a letter dated **12th April 2012** addressed to the Registrar, High Court of Kenya, Mombasa. A copy thereof is filed herein. The same was referred to the Court, the Criminal Division, of the High Court, Mombasa. I preside over criminal matters in that Division. The letter was written by one A.O. Hamza, of A.O. Hamza and Co. Advocates. I have considered the contents of the same.

The brief facts of the matter are that on the 10th day of April 2012, an accused by the name of **HAMZA MOHAMED MAYER** was arraigned before Hon. J. Ombura, SRM, at the Chief Magistrate's Court at Mombasa, charged with the offence of: **being unlawfully present in Kenya** Contrary to Section 53 (II) (J) as read with Section-52(2)-of-the-Kenya Citizenship and Immigration Act No. 12 of 2011 herein referred to as the Act.

The particulars therefore are as per the charge sheet. The charges were read to the accused and he pleaded guilty. He was subsequently convicted on his own plea of guilty and sentenced. He was sentenced to serve one year imprisonment and ordered to be repatriated upon serving the sentence. He was notified of his 14 days right of appeal.

It is against this background that the letter seeks the matter be reviewed under the revisionary power of the Court. In seeking for the same, the application states that:

- That the charge sheet was defective; in that there is no Section 52(2) of the said Act.
- That the trial magistrate was led extraneous factors to bundle the accused with terrorists and specifically Somali criminals.
- That the trial magistrate was biased to say ***“security threat posed by aliens and specifically Somalis”***
- That the sentence imposed is harsh, excessive and unwarranted, taking into account the accused pleaded guilty; thus saving the court's time.

That the court do satisfy itself on the corrections, legality and propriety of the sentence or the order given in the criminal Case No. 1152/2012 by Hon. J. Omburah Senior Resident Magistrate.

The power of the High Court in relation to revision is found under the provisions of sections

362 and 364 of the Criminal Procedure Code, (Cap. 75) Laws of Kenya. Section 364(5) of the Criminal Procedure Code states that:-

“When an appeal lies from a finding, sentence – or – order – and – no - appeal is brought, no proceedings by way of revision shall be entertained at the insistence of the party who could have appealed”.

The distinctive features of revisions is that the High Court – has – complete – discretion - because revisionary power is discretionary. For all purpose, revisionary proceedings are in law deemed to be appellate proceedings. Thus, they should not be undertaken until the period of appeal is over or an inquiry has been made as to whether an appeal has or is likely to be filed because if revisionary powers are exercised before an appeal is disposed of the potential appellant may lose his right of appeal. Section 361 (7) of the Criminal Procedure Code equates revisionary proceedings with appellate proceedings.

Revision is thus important in cases, where no right of appeal is provided for.

In this case, the applicant alleges, the charge sheet which forms the basis and the root of this matter was defective. That issue can only be canvassed through a hearing and not through revision. The Sentence challenged is not said to be illegal but harsh and excessive, again in my considered opinion that is a matter that needs to be canvassed through evidence or submissions.

I am therefore unable to find that the issues raised herein are purely matters of revision. I find they may form a subject of appeal.

I decline to allow the request for revision herein.

Orders accordingly.

Dated, signed and delivered at Mombasa on this 2nd day of May 2012.

G. NZIOKA

JUDGE

2nd May 2012

Court – Deputy Registrar to serve the order to the relevant parties herein.

**G. NZIOKA
JUDGE**

2nd May 2012