

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPLICATION 291 OF 2005

MOHAMED IBRAHIM SHERRIFAPPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appellant MOHAMED IBRAHIM SHARRIFF, has appealed to this Court against the sentence imposed by the Learned Chief Magistrate in respect of Criminal Case Number 1213 of 2005. The Appellant was arraigned before the said Court on one count of knowingly possessing and using a passport issued to another person contrary to Section 13 (1) (F) of the Immigration Act. The Appellant pleaded guilty to the charge. Accordingly he was convicted and sentenced to 3 months jail without an option of a fine. He then lodged this Appeal limited to sentence only.

When the Appeal came up for hearing, Mr. Gakoi Learned Counsel for the Appellant submitted that the offence attracts a fine as well as a non-custodial sentence. That the Appellant pleaded guilty, was a first offender and a young man aged about 19 years. In those circumstances imprisonment without an option of a fine was harsh and excessive. He therefore pleaded with this Court to interfere with the sentence imposed. In respect Ms. Nyamosi State Counsel submitted that in view of the fact that the Appellant was a young man she would not object to a non-custodial sentence being imposed.

I have perused the proceedings of the Lower Court and considered very carefully the submissions of Learned Counsels herein. I note that the Appellant pleaded guilty to the offence at the first instance and thereby saved the Court valuable Judicial time. It is also noted from the record that the Appellant aged about 20 years. He is a first offender as well. Although the sentence imposed was perfectly legal, the Learned trial Magistrate does not seem to have appreciated the fact that the Appellant was a young man, a first offender and that he had pleaded guilty to the charge. It is my considered view that had he taken into account the aforesaid factors, perhaps he would have imposed a more lenient punishment, for instance a non-custodial one. While sentencing the Appellant, the Court noted that the offence was prevalent. It would appear that the Court was carried away or influenced greatly by the prevalence of the offence in sentencing the Appellant to a custodial sentence. In my view I think a non-custodial sentence would have been appropriate in the circumstances of this case.

I note that the Appellant has already served three quarter of his jail term. I find that the imprisonment term already served by the Appellant to be sufficient punishment. Rather than impose a fine as urged by both Counsels, I would rather commute the sentence of the Appellant to the term already served. In the result the Appellant hereby is set at liberty unless otherwise lawfully held.

Dated at Nairobi this 18th July, 2005.

M. S. A. MAKHANDIA

JUDGE