

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
Criminal Revision Case 21 of 2005

Arising from Original Bungoma SPM'S Cr. No.2298 of 2005

CHRISTOPHER OWERE.....APPLICANT
VS
REPUBLIC.....RESPONDENT

RULING ON REVISION

The applicant herein, Christopher Owere, pleaded guilty to a charge containing two counts. The first count is in respect of a charge of being in possession of forged currency contrary to section 359 of the Penal code. The second count is in respect of a charge of being unlawfully present in Kenya contrary to section 13(2) of the Immigration Act.

The applicant was convicted on both counts and sentenced to serve 1 year imprisonment on each count.

The applicant has written to this Court beseeching it to interfere with the decision on revision. I have perused the grounds set out in the letter dated on 5th September 2005.

It is evident that the applicant has raised grounds of appeal which are not within the province of Revisions. However, despite that defect, I will exercise my discretionary power to peruse the proceedings that were before the subordinate court to determine the legality, correctness and propriety of the learned Senior Principal magistrate's decision.

The law provides for a maximum sentence of 7 years imprisonment in count 1 whereas count 2 attracts a maximum sentence of 1 year imprisonment or in the alternative a fine of Ksh.20,000/= or both.

It is evidently clear that the trial Senior principal Magistrate's decision on count 1 cannot be faulted. However, the learned trial magistrate should have given the applicant an option of a fine on count 2. I will not interfere with the decision on count 1. The sentence on count 2 is manifestly excessive because the trial magistrate gave a maximum sentence provided by law. Consequently, the sentence in count 2 is set aside and substituted with a fine of Ksh.10,000/= and in default to serve 6 months imprisonment from the date of sentence. The sentence is to run concurrently with that in count 1. Otherwise the rest of the learned Senior Principal Magistrate's decision on conviction and sentence stands save for what I have pronounced.

Dated and delivered this 25th day of November 2005.

J. K. SERGON

JUDGE

In open Court in the presence of Mr. Onderi for the state and in the absence of the accused.