



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 550 OF 2004
*(From original conviction (s) and Sentence(s) in Criminal case No. 2736 of 2004
of the Chief Magistrate's Court at Nairobi (A. O. Muchelule –C.M.)*

ALICE NUNGARI KIANDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant **ALICE NUNGARI KIANDA** was convicted of two offences under the Immigration Act on her own plea of guilty. In the first count she was charged with **KNOWINGLY POSSESSING AND USING A FORGED PASSPORT** contrary to Section 13(1) (d) of the Immigration Act. In count two she was charged with **KNOWINGLY POSSESSING AND USING A PASSPORT WITH A FORGED ENDORSEMENT** contrary to Section 13(1) (d) of the same Act. She was sentenced to serve four months imprisonment in each count and the sentence was ordered to run concurrently.

The Appellant was dissatisfied with the sentence and so filed this Appeal. Having noted that the sentence imposed against the Appellant was very short, this Appeal was admitted to hearing and given a date for the hearing on priority.

It is the Appellant's submission that the sentence was excessive on grounds that the offence was petty. While I do not agree with the counsel for the Appellant, **MR. MARIARIA**, that the offence is petty, I do agree that it is a misdemeanor and that an option of a fine is one of the sentences a court can impose.

MR. OLENGO, learned counsel for the State did not oppose this Appeal. He submitted that since the Appellant was a first offender and the offence called for a fine, the sentence was uncalled for. While I agree that the learned trial magistrate has the power to impose either a fine or a term of imprisonment not exceeding 3 years, under **Section 13(1) (d)** of the Act, such a discretion should be exercised fairly and judicially.

It is on record that the Appellant pleaded guilty to the charge thus saving the court's time. It is also on record that the Appellant was a first offender. Both factors, if considered by the trial court would have vitiated against the imposition of a custodial sentence. I find the sentence imposed in the circumstances was excessive and harsh and therefore this court has power to interfere with the same.

The appeal against sentence is allowed. The sentence of 4 months imprisonment is set aside.

The court substitutes sentence with a fine of Ksh.10,000/- in each account in default four months imprisonment on each count.

Orders accordingly.

Dated at Nairobi this 30th day of November 2004.

LESIIT

JUDGE