



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL APPEAL NO. 556 OF 2004**

**(From original conviction(s) and Sentence(s) in  
Criminal case No. 1241 of 2004 of the Chief Magistrate's Court at**

**MIKOKA JEAN CLAUDE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The Appellant **MIKOKA JEAN CLAUDE** was convicted of three counts as follows:

Count 1- **BEING UNLAWFULLY PRESENT IN KENYA** contrary to Section 4 (1) of the **Immigration Act**, Count 2 – **FAILING TO REPORT ENTRY** contrary to **Section 3 (1)** of the **ALIENS RESTRICTION ACT** and Count 3 – **FAILING TO REGISTER AS AN ALIEN** contrary to **Section 3 (3)** of **ALIENS RESTRICTION ACT**. He was fined 50,000/- in default one year's imprisonment in count 1 and 5,000/- in default six months each of counts 2 and 3. He has appealed against the sentence.

In his grounds of Appeal the Appellant urges this court to find the sentence was excessive and to reduce it or give a non-custodial sentence. He also states that he was remorseful for the offence.

In the statement in court, the Appellant submitted When the Appeal came up for hearing, both Appellants indicated that they were not prepared to proceed on account of not having been served with the proceedings. The state through learned counsel MR. MAKURA, indicated that it was conceding to the Appeal basically on account of the offence having been committed on 12th April 2002 as per the charge, which, according to **MR. MAKURA** was way after the Appellants had been arrested. We have since looked at original charge sheet and have confirmed that the date of the offence in the main count of **ROBBERY WITH VIOLENCE** contrary to **Section 296 (2)** of **Penal Code** was the 7th April 2002. The date 12th April 2002 was a typographical error on the typed proceedings of the trial court record. The basis of concession by the learned state counsel was therefore mistaken.

Consequently we find that justice requires that we set aside the proceedings of these Appeals and have it re-heard afresh for two reasons.

In order to give;

1. The Appellants an opportunity to be heard. They had not been served with the proceedings and at least one of them indicated that they had a counsel who was to argue his appeal and who was absent. They did not make any submission on their Appeals.
2. To give the Respondent an opportunity to be heard on the merits of the Appeal

Accordingly, we set aside the proceedings of these two appeals and order that new dates for the hearing of the Appeal on the merits be set on priority basis. Orders accordingly.

Dated at Nairobi this 17th day of December 2004.

**LESIIT**

**F.A. OCHIENG'**

**JUDGE**

Read, signed and delivered in the presence of;

**LESIIT**

**JUDGE**

**Ag. JUDGE**

**F.A. OCHIENG'**

**Ag. JUDGE**