

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

APPELLATE SIDE

CRIMINAL APPEAL No 391 OF 2002

**From Original Conviction(s) and Sentence(s) in Criminal Case No 375 of
2002 of the Chief Magistrate's Court at Nairobi)**

MANUEL VICTOR MOREIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant is a Nigerian National. He pleaded guilty to three offences under the Immigration Act Cap. 172 Laws of Kenya. On each count the appellant was sentenced to serve 9 months imprisonment. Sentences were to run concurrently. He was also to be expatriated back to his country.

The appellant having pleaded guilty, this appeal is against sentence only. That notwithstanding, the first and second counts relate to the same subject matter which is he forged passport and covered by the provisions of Section 13(1) (d).

There should have been only one count not two and it is not enough to uphold that the appellant pleaded guilty to both counts. In my judgment therefore counts one and two constitute a single offence under section 13(1) (d).

The sentence provided for that offence is a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.

On the third count the sentence provided for is a fine not exceeding twenty thousand or to imprisonment for a term not exceeding one year or to both.

The appellant is not a first offender. The record says as much. But he is a foreigner and his continued stay here even in prison is more detrimental to law enforcement agencies.

I have combined the first and second counts to be one. Therefore only two counts remain to be addressed on sentence.

I am inclined allow the appeal which I hereby do by substituting the sentence imposed and in place thereof impose a fine of Kshs. 20,000 in default six months imprisonment on count one (first and second counts) combined and shs. 20,000/- in default six months imprisonment on count two(previously) count three.(Making a total of Kshs. 40,000.

The order for repatriation shall remain and it is ordered that, on payment of the fine or completion of the prison term the appellant shall be handled over to the immigration officers, for immediate repatriation to his country.

Orders accordingly.

Dated and delivered at Nairobi this 15th day of May, 2002.

MBOGHOLI MSAGHA

JUDGE