

IN THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI

MISC APP.367 OF 2002

ICHE CHUKWU NTINU.....APPLICANT

V E R S U S

IN THE MATTER OF IMMIGRATION.....RESPONDENT ACT

R U L I N G

This is an application by way of Notice of Motion for Judicial Review against the order by Minister of State responsible for Immigration matters Hon. Julius Sunkuli, dated 13th January 2002 in which he declared applicant UCHE CHUKWU NTINU a Nigerian National deported in the National interest. The applicant says in his verifying affidavit sworn on 16th March 2002 that he has lived in Kenya and married a Kenyan Nancy Njoki Kimani on 5th January 1995 in Lagos Nigeria. That since 1996 they have lived in Kenya and they have 2 children. That his stay has been on Annual multiple business visa and the last one having been issued in October 2001 the next was due in October 2002. That on 10th January 2002 at 9 am some immigration officers went to his house at Buru Buru and said he was illegal immigrant and took him to Jomo Kenyatta Airport from where he was deported to Nigeria after 8 days. His complaint was that he was never given a hearing or informed of the reasons for his deportation. But the respondent through affidavit of RICK NJUGUNA, a Senior Immigration Officer sworn on 25th January 2002 states that the applicant was a Nigerian National and at the material time was issued with Business / Visitor Visas to travel to Kenya but that at no time was applicant issued with a resident / work permit and consequently he was not eligible to be a resident and yet the applicant was engaged in the business of Auto Spares and Branded Clothes without prior written approval in contravention of Section 20(3) of the Immigration Act Cap.172 Kenya Laws. That the applicant was issued with two copies of the order before being deported. The respondent pleads privileged communication under Section 131 and Section 132 of Evidence Act in respect of his sources of information as they related to National Security.

I believe that an act of deportation may in certain cases involve issues of National Security and public interest to be balanced against compassionate circumstances. I believe further that the principles of administrative law apply and there is a requirement as to fair hearing. It is a fundamental rule of administrative law that a person must be accorded a fair hearing and normally the courts would expect a fair hearing to any deportee unless there are good reasons not to require a hearing but where the Government relies on the issue of National Security there usually ought to have been established some evidence to support it.

It is evidenced here and it is common ground that applicant was engaged in business without having a resident permit.

After considering this matter I do not think it is a proper case for exercising my discretion in the way sought.

Application is dismissed with costs.

Delivered this 11th day of July 2002

A. I. HAYANGA

J U D G E

Read to Mr. Nyandara for Applicant

Mr. Kinyua S/c Respondent