



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF NAIROBI(NAIROBI LAW COURTS)**

**CRIMINAL APPLICATION NO.440 OF 2000**

**KALU TIMOTHY IHEKE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPLICATION NO.441 OF 2000**

**CHARLES ONWUCHERWA OKORONKWO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

This is an application for Judicial Review by way of Notice of Motion filed on 26th September, 2000. By this application which is supported by an affidavit and the statement the applicant wants the decision of the Minister for the state ordering the deportation of the applicant quashed. Mr. Makolo, the learned advocate for the applicant argued that the order made by the Minister was oppressive, was in bad faith and contrary to the rules of natural justice. The learned advocate pointed out, inter alia, that the applicant was lawfully in Kenya and was operating a large business in which he had invested Sh.13.5 million.

Referring to various authorities and the international conventions to which Kenya was the party, Mr. Makolo pointed out that the applicant was not given any chance to be heard before the Minister made the order and thus the rules of natural justice were breached. Mr. H. Okumu, the learned Senior Principal State Counsel opposed the application arguing that the Minister made the order legally and that the order was made in the National interest of Kenya. Giving his reasons, Mr. Okumu argued that the Minister did not have to call the applicant to present his reasons against the deportation due to compelling reasons of National interest. he added that after the deportation the applicant may present his case.

I believe through the Nigerian High Commission to the Minister to review the order under Section 3(3), of the Immigration Act, Cap.172. I have considered the Submissions made by the counsel on both sides with utmost care. It is clear that in making the order in question the Minister acted as an Executive Officer and as such was duty bound to act on any information he may have received without any obligation to say anything about it (the information) to the applicant. As an Executive Officer the Minister has the responsibility and has to act in the public interest when making the order as the present one. It is my considered view that the courts have no power to question the decision of the Minister in the present case. The application for the Judicial Review fails and I dismiss it. The question of releasing the applicant

on bail does not arise now as I have upheld the Ministerial Order for the deportation.

**V.V. PATEL**

**JUDGE**

3/11/2000

Makolo:

'Pray for leave to appeal.

Court: Granted.

**V.V. PATEL**

**JUDGE**

**3-11-2000**