



**Adow v Republic (Criminal Revision E008 of 2020)
[2023] KEHC 655 (KLR) (Crim) (7 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E008 OF 2020
DO OGEMBO, J
FEBRUARY 7, 2023**

BETWEEN

ALI ABDULLAHI ADOW APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Ali Abdullahi Adow, has moved this court by way of a notice of motion application herein on 5.1.2023. The application is brought under section 362, 364 and 367 of the Criminal Procedure Code and also articles 47(1) and 50(2) of the Constitution. The main prayer in this application is prayer (2), that;

“That this honourable court exercises its powers and review or set aside the sentence of a fine of Kshs 800,000/= imposed on him by the lower court and order for his repatriation to his home country Somalia while factoring that the applicant was arrested on November 21, 2022 and has been in custody since December 6, 2022.”

2. Ms. Shikali, for the applicant, submitted that the applicant, a Somali national was arrested at the Jomo Kenyatta International Airport while on transit to Britain. That he was charged with 5 counts and sentenced as follows:-
 - i. Count I: Fined Kshs 200,000/= or in default to serve 6 months imprisonment
 - ii. Count II: Fined Kshs 100,000/ or in default to serve 6 months imprisonment.
 - iii. Count III: Fined Kshs 300,000/= or in default to serve 6 months imprisonment.
 - iv. Count IV: Fined Kshs 100,000/= or in default to serve 6 months imprisonment.



- v. Count V: Fined Ksh. 100,000/= or in default to serve 6 months imprisonment..
3. That the court did not indicate whether the sentences would run concurrently or consecutively. Also that the sentences are too harsh. It was prayed that the sentences be revised and an order of repatriation be imposed. Counsel relied on 3 cases, ie, *Cyril Stanley Chiduben alias James Waiswa v Republic* [2014] eKLR, in which the Hon Justice L Kimaru allowed a similar application. And *Johnson Aolarewaju Ogola v Republic* [2016] eKLR, in which the Honourable Justice Ngenye Macharia, also allowed a similar application and accordingly issued an order of repatriation. And a third case of *Justus Abimbola Ogola v Republic* [2016] eKLR.
 4. Ms Akunja, appearing for the state, conceded to the application. Counsel agreed that a repatriation order should issue in view of the nature of the offences and also the submissions of the counsel for the applicant.
 5. I have considered this application and the submissions made to it by both the applicant and Respondent sides. I must say that the circumstances of this case are strikingly similar to those in the 3 case relied on by counsel for the applicant. The state has conceded to this application.
 6. In the circumstances, I am persuaded to exercise this court's revisionary powers under section 362 of the *Criminal Procedure Code* in favour of the applicant. I accordingly revise the sentences imposed by the trial magistrate against the applicant. I set aside the sentences and substitute them with an order that the applicant sentence be commuted to the period already served. The applicant to be set free forthwith. He shall be handed over to the Immigration Department and to be repatriated back to his home country, Republic of Somalia. It is so ordered.

D.O.OGEMBO

JUDGE

7TH FEBRUARY, 2023

RULING READ OUT IN OPEN COURT IN THE PRESENCE OF THE APPLICANT (NAIROBI REMAND), MS SHIKALI FOR APPLICANT AND MS ADHIAMBO FOR THE STATE.

DO OGEMBO

JUDGE

7TH FEBRUARY, 2023.

