

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL DIVISION

CRIMINAL REVISION NO.E005 OF 2021

(Criminal Case No. 255 of 2021 of the Chief Magistrate's Court at Nyeri)

REPUBLIC.....APPLICANT

VERSUS

WWINEZA ALINE

ESTHER MUHA WENINEZA.....RESPONDENTS

RULING ON REVISION

1. **Wwineza Aline and Esther MuhaWenineza** were both charged with the offence of Being unlawfully in Kenya contrary to Section 53(1) (j) as read with Section 53(2) of the Kenya Citizenship and Immigration Act.
2. A brief outline of the case was that the accused persons were, on the 18/02/2021 in Nyeri Township within Nyeri County, found to be unlawfully present in Kenya in that they did not have any valid travel permits in contravention of the Act. They were arrested and charged with the offence to which they pleaded guilty and were discharged under Section 35(1) of the Criminal Procedure Code. The trial court issued a repatriation order that the accused persons be repatriated to Rwanda through the OCS Nyeri Police Station and the Immigration Department.
3. The Office of the Director of Public Prosecutions filed for Revision of the trial court's order vide a letter dated 4/03/2021. The grounds cited therein are that the Immigration Department that was to enforce the order is experiencing logistical challenges in the repatriation of the accused persons to Rwanda as the country is in lockdown at the borders due to the Covid-19 Pandemic.
4. The accused persons are therefore currently languishing in custody at the Nyeri Police Station and will continue languishing there indefinitely. This indefinite period of waiting is highly irregular and can be comparable to a sentence that is harsh and excessive; Therefore the order warrants interference by this court.
5. In the light of the material placed before this court and the circumstances of the case, this court is satisfied that this is a suitable case for it to exercise its supervisory powers of revision conferred under the provisions of Section 364 of the Criminal Procedure Code.
6. The repatriation order imposed on the 26/02/2021 is hereby set aside and substituted with an order to release the accused persons to the Rwandan High Commission situate in Nairobi to enable them to regularize their stay in Kenya.

Orders accordingly.

Dated, Signed and Delivered at Nyeri this 4th day of March, 2021.

HON. A. MSHILA

JUDGE