



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION CASE NO. E028 OF 2021

ADAN MOHAMED JAMA.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDET

RULING

The applicant ADNAN MOHAMED JAMA, has filed an application herein dated 5.2.2021 on 9.2.2021. The same is for revision under section 362 and 364 of the Criminal Procedure Code, Cap 75, and various provisions of the constitution of Kenya. Attached to the application is an affidavit of the applicant in support of the same. In the application and indeed in the submissions made by the applicant in court, the applicant pleads for revision of the orders of sentence made by the lower court against the applicant in Criminal Case No. e4791/2020 (Milimani), on the basis that the same was excessive. He has pleaded for leniency since he is unable to meet the fines imposed. He pleads that he be repatriated to his home country, Somaliland.

The prosecution, in its short response, has only urged the court to apply its discretion in apportioning the sentence.

Section 362 of the Criminal Procedure Code gives this court the jurisdiction to revise any order, finding or sentence of a subordinate court if it is shown to exist any illegality, incorrectness or impropriety. To this end, it is incumbent upon the applicant to show to this court, such illegality, incorrectness or impropriety in the said orders of the lower court.

I have considered the record of the lower court, including the 3 counts that the applicant was charged with and to which he entered pleas of guilty, and the sentences passed by the trial court. The same are as follows:-

On count I, the applicant faced a charge of knowingly using a travel document issued to another person contrary to section 54(1)(m) as read with section 54(2) of the Kenya Citizenship and Immigration Act, 2011 Laws of Kenya. The sentence therein is a fine of not exceeding 5 million shillings or imprisonment not exceeding 5 years or to both.

On count II, he faced a charge of knowing using a travel document with a forged endorsement contrary to section 54(1)(c) as read with section 54(2) of the Kenya citizenship and Immigration Act, 2011 laws of Kenya. The sentence provided for in this section is fine of not exceeding Kshs.5 million or in default imprisonment for a term not exceeding 5 years or to both.

And in count III, he faced a charge of knowingly using a travel document with a forged endorsement contrary to section 54(1)(c) as read with section 54(2) of the Kenya Citizenship and Immigration Act, 2011 Laws of Kenya. The sentence for this offence is also a fine not exceeding Kshs.5 million or default imprisonment not exceeding 5 years or to both.

The lower court, in the sentence aggrieved of passed fines of Ksh.300,000/= or in default to serve 6 months imprisonment on counts I and II. And for count III the court passed a sentence of a fine of Kshs.300,000/= or in default to serve 6 months imprisonment.

It is the position of this court that the sentences above, were not only lenient, but within the law. I accordingly do not find any incorrectness, illegality or impropriety in the same that would warrant a revision of the same. This application of the applicant dated 5.2.2021 lacks in any merit. The same is dismissed. For avoidance of doubt, the applicant is ordered to serve his sentence as ordered by the trial court.

D. O. OGEMBO

JUDGE

1.4.2021

Court:

Ruling read out in open court (on-line) in the presence applicant, Ms. Gikonyo for the state. Same accordingly interpreted by Ibrahim, Court clerk.

D. O. OGEMBO

JUDGE

1.4.2021