



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. E150 OF 2021

SAID SUDI MWAKWABWIRA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the judgement and sentence passed by Hon. E. Nyaloti, CM on 11th May 2021 in Mombasa Chief Magistrate's Court Criminal Case No. E1146 of 2021)

RULING

1. SAID SUDI MWAKWABWIRA pleaded guilty to the charge of smoking on a lavatory in an aircraft contrary to section 59(1) (a) of the civil Aviation Security Regulations of 2015 Legal Notice No. 190.
2. He was fined Kshs. 300,000/= in default to serve 2 years imprisonment.
3. The appellant seeks that this court considered he is a 1st offender and consider his mitigation and revise the sentence pursuant to Section 362 to 364 of the Criminal Procedure Code.
4. I have looked at the Section under which appellant was charged and confirmed that it provides for a penalty of fine not exceeding Kshs. 500,000/= or imprisonment not exceeding 6 months or both.
5. The trial magistrate was therefore in error to impose 2 years imprisonment in default of payment of the fine of Kshs. 300,000/=.
6. In consideration of the applicant's mitigation, this court revises the sentence to Kshs. 250,000/=in default to serve 3 months jail term.
7. Orders Accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT /ONLINE THROUGH MS TEAMS, THIS 22ND DAY OF JULY, 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel – Court assistant

Ms. Karanja for Respondent

Applicant – No appearance

Mr. Were Advocate for Applicant

COURT

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HON. LADY JUSTICE A. ONG'INJO

JUDGE