



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 12 OF 2019

KAMBA ABRAHAM..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the sentence of the Senior Principal Magistrate's Court at Wajir in Criminal Case No. 508 of 2018 delivered on 16th November 2018 by Hon. P. N. Areri (SRM))

JUDGEMENT

1. The appellant was charged with:Count I: Being unlawfully present in Kenya contrary to section 53(1) (j) as read with section 53(2) of the Kenyan Citizenship and Immigration Act No. 12 of 2011.

2. The particulars being that on 27th October 2018 at around 1839 hrs at Kornesh in Mandera East Sub-County within Mandera County being a Uganda National was found unlawfully present in Kenya without valid visa or permit authorizing him to stay in Kenya.

3. Count II: Altering a visa contrary to section 54(1) (b) as read with section 54(2) of the Kenyan Citizenship and Immigration Act No. 12 of 2011.

Particulars being that on diverse dates between the months of March and October 2018 within the Republic of Kenya appellant knowingly and willingly altered a Kenyan Visa issued to him on 30th March 2018 at Busia border Immigration office a fact he knew to be false.

4. He pleaded guilty and after mitigations he was sentenced –

Count 1: Fined Kshs. 200,000/= and in default to serve 2 yrs imprisonment.

Count II: Fine of Kshs. 3 million in default 3 years' imprisonment. He is also to be repatriated thereafter.

5. Being aggrieved by the sentence, he filed instant appeal only as against the sentence terming it as excessive.

6. His mitigations in appeal is recorded as follows:

I. That he is a first offender with no previous offence.

II. That he pleaded guilty to the charge without wasting the court's time.

III. That he is a youngster of a prime age without criminal records since birth.

IV. That the circumstances surrounding this offence portrayed my sincerity and genuine heart without mens rea.

V. That he presented him to the immigration offence upon expiry of his visa and he was pardoned and given time to travel back to Uganda.

VI. That he was arrested at the gate of the police station when he approached some solders to inquire upon making a report and notification for travel.

VII. That instead of the police officers following the order of the immigration office and assist him on how to travel back they opted to arrest him.

VIII. That the sentence of fine of Kshs.3 million and two hundred thousand (3,200,000/-) in default 5 years' imprisonment is harsh and excessive.

IX. That he is the first born of 11 (eleven) siblings his parents passed away whereas he is the only bread winner. This situation forced him to seek for job. He had along with him his certificate of academics.

7. The prosecution left it to court's discretion to whether to temper with sentence.

8. Under Judiciary sentencing guidelines, the court is to consider the fact that the accused pleaded guilty to save court time and that he was a first offender inter alia. The court has considered the said 2 twin factors plus the multiple others set down by the accused.

9. The court finds that the accused ought to have been given a larger credit in sentencing thus the court will temper with the sentence awarded to the accused thus the court makes the following orders;

i) The sentences of count 1 ksh200,000 and in default 2 years' imprisonment and fine of ksh 3000,000 and in default 3 years' imprisonment are set aside and substituted to the period already served to date of judgement.

ii) The accused to be deported to Uganda forthwith.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 19TH DAY OF FEBRUARY, 2020.

C. KARIUKI

JUDGE