



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL APPEAL NO.8 OF 2019

(Appeal from original sentence and conviction in Kericho CM Cr. No.235 of 2018)

ROSEBELLA CHEBET CHELGET.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. After a full trial the appellant was convicted of two offences, which were counts 2 and 3 in the trial court, and acquitted on count 1.
2. The charges on which he was convicted were obtaining another identity card without disclosing to the Registration Officer the fact of previous issue contrary to section 14 (1) of the Registration of Persons Act (cap. 107) Laws of Kenya, and the offence of giving false statement for the purposes of registration contrary to section 14 (1) (b) of the Registration of Persons Act.
3. The trial court then proceeded to sentence the appellant to 18 months imprisonment on each of the two counts, the sentences to run concurrently from 1st February 2019.
4. The appellant then appealed to this court on 4 grounds through counsel, but Mr. Orege for the appellant relied on ground 4 only on sentence.
5. Counsel argued that the trial court did not give room for mitigation and merely recorded mitigation nil. The trial court also did not ask for a pre-sentence report which would have shown that the second identity card was for purposes of adding the appellant’s husband name, and such report would have disclosed that the appellant and complainant were pursuing a succession case.
6. Counsel argued that since the sections of the Registration of Persons Act which the appellant was charged, provided for the sentence of a fine, that option should have been considered by the court. Counsel urged that this court finds that the prison term already served from February this year was adequate sentence, as the appellant was 65 years old.
7. In response, learned Prosecution Counsel Ms Keli submitted that the appellant should have been given the option of fine provided for under section 14 (1) of the Act – which provides a fine of Kshs.200,000/= as an alternative. Counsel also relied on section 26 of the Penal Code and conceded to the appeal.
8. I have considered this appeal on sentence. The Prosecuting Counsel has conceded to the appeal.
9. Section 14 (1) of the Act provides as follows in relation to sentence:-

“14 (1) Any person who.....

Shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or both.”

10. The appellant having been imprisoned to 18 months for offences under this section, the prison sentence was illegal in the first place, as it was in excess of the maximum prison sentence. Secondly, the first sentence option given in the section is that of a fine, which should have first been considered by the magistrate before imposing a prison sentence.

11. I thus find sufficient reason to interfere with the prison sentence. It is illegal and I set it aside. I cannot substitute it with a fine; as the appellant has already served about 8 months of her prison term, I order that the prison term served is adequate punishment.

12. I thus allow the appeal on sentence and reduce the prison term to the sentence already served. The result is that the appellant will be released from prison forthwith, unless otherwise lawfully held.

Dated and delivered at Kericho this 19th day of September 2019.

GEORGE DULU

JUDGE