

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO 43 OF 2019

FIDEL SANTOS.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original Conviction & Sentence dated 28/03/2019 in Nanyuki CM Criminal Case No 402 of 2019 – L Mutai, CM)

J U D G M E N T

1. The Appellant herein, **FIDEL SANTOS**, is a national of Guinea- Bissau. He was charged with two counts in an amended charge sheet. The first count was *possession of paper or implements of forgery* contrary to **section 367(a)** of the *Penal Code*. He pleaded not guilty to that charge.
2. In the second count he was charged with *unlawful presence in Kenya* contrary to **section 53(1) (j) & (2)** of the *Kenya Citizenship and Immigration Act, No 12 of 2011*. It was alleged in this court that in the night of 03/03/2019 and morning of 04/03/2019 at *Timau Township* in Buuri Sub-County, Meru County, being a citizen of Guinea–Bissau, he was found to be unlawfully present in Kenya without valid documents from the *Immigration Department*. He pleaded guilty to this charge and admitted the facts given by the prosecution. Those facts were, *inter alia*, that his passport at page 8 bore an entry stamp by Kenyan Immigration authorities dated 28/01/2019 that was valid for only one month, which had long expired by the time he was arrested. That one month entry permit was later verified by Immigration authorities to be a visitor’s pass which expired on 28/02/2019.
3. The Appellant admitted those facts and he was duly convicted of the offence in the second count. On 28/03/2019 he was sentenced to a fine of KShs 200,000/00 and in default of payment to serve 12 months imprisonment. The trial court further ordered that upon payment of the fine or upon serving the default sentence, the Appellant be repatriated back to his country. He was subsequently acquitted of the charge in Count I under **section 210** of the *Criminal Procedure Code* for want of evidence.
4. The Appellant did not pay the fine and has been serving the default sentence. He has appealed against both conviction and sentence.
5. The grounds of appeal filed by the Appellant are framed in such a way as to suggest that he was tried for the offence he was convicted of. He has totally ignored the fact that he pleaded guilty, admitted the facts given and was thus convicted upon his own plea.
6. I have seen from the record of the trial court that the Appellant was represented by counsel when he pleaded guilty. The learned counsel offered mitigation on his behalf.
7. When he presented his appeal the Appellant appeared sufficiently versed in spoken English which he spoke without any problem. He appeared to fully understand the court proceedings which were in English.
8. Upon perusal of the trial court record, I am satisfied that the plea as taken was clear and unequivocal. The Appellant admitted the facts that showed that his brief one-month visitor’s pass to be in Kenya had long expired when he was arrested, and he was thus unlawfully in the country. He has no cause to complain about the plea and he has no right of appeal against the conviction.
9. As for the sentence, both the fine (and the default term of imprisonment) as well as the order for repatriation, were perfectly lawful and cannot be faulted.
10. I find no merit at all in the appeal. It is hereby dismissed in its entirety. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 6TH DAY OF NOVEMBER 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 7TH DAY OF NOVEMBER 2019