



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL APPEAL NO. 5 OF 2019

CHARLES OUMA OCHIENG.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal case No.694 of 2019 of the

Chief Magistrate's Court at Busia by Hon. S.O Temu Principal Magistrate)

JUDGMENT

1. **Charles Ouma Ochieng**, the appellant herein, was convicted after he pleaded guilty to four counts.
2. In count one he was charged with an offence of possessing a Kenyan document purporting to establish his identity contrary to Section 54 (1) (I) as read with Section 54(2) of the Kenya Citizenship and Immigration Act 2011.
3. The particulars of offence were that on the 5th day of May 2019 at **Busia One Stop Boarder Post** within Busia county being a Ugandan national he was found possessing a Kenya national identity card number [xxxx] in the name of **Charles Ouma Ochieng** purporting to establish his identity as a Kenyan national contravening the Kenya Citizenship and Immigration Act 2011.
4. In count two he was charged with an offence of knowingly possessing a Kenyan identity document which he cannot reasonably give a proper account of its possession contrary to Section 54 (2) of the Kenya Citizenship and Immigration Act 2011.
5. The particulars of the offence were that on the 5th day of May 2019 at **Busia One Stop Border Post** within **Busia County** being a Ugandan national was found possessing a Kenyan national identity card number [xxxx] in the name of **Bradley Atebe Ouko** which he could not give a proper account of its possession contravening the Kenyan Citizenship and Immigration Act 2011.
6. In count three he was charged with an offence of knowingly possessing a Kenyan identity document which he could not reasonably give a proper account of its possession contrary to Section 54(1) (d) as read with Section 54(2) of the Kenya Citizenship and Immigration Act 2011.
7. The particulars of the offence were that on the 5th day of May 2019 at Busia One Stop Border Post within Busia County being Ugandan national he was found possessing a copy of Kenyan national identity card number 11820688 in the name of Emmanuel Achola which he could not give a proper account of its possession contravening the Kenya Citizenship and Immigration Act 2011.
8. In count four he was charged with the offence of being unlawfully present in Kenya contrary to Section 53(1) (j) as read with Section 53(2) of the Kenya Citizenship and Immigration Act 2011.
9. The particulars of offence were that on the 5th day of May 2019 at **Busia One Stop Border Post** within **Busia County** being Ugandan national he was found to be unlawfully present in Kenya in that he did not have any valid immigration travel document while you were travelling from Nairobi, contravening the Kenya citizenship and Immigration Act 2011.
10. The appellant was sentenced to pay a fine of Kshs. 200,000/= or serve two years' imprisonment in default. He now appealed against the sentence.
11. His grounds of appeal can be summarised as follows:

a) That he was a first offender.

b) That the sentence was harsh.

12. The appeal was opposed by the state through Mr. Gacharia, learned counsel who contended that the sentence was fair.

13. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs. Republic [1972] EA 32.**

14. Section 54 (2) of the Kenya citizenship and Immigration Act 2011 provides as follows:

Any person convicted of an offence under this section shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both:

Section 53(2) of the Act provides:

Any person convicted of an offence under this section shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both;

15. In the case of **Nelson vs Republic [1970] E.A. 599** the court of Appeal stated that an appellate court can only interfere with the sentence of the trial court upon being satisfied of the existence of certain circumstances. This is what the court said:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in James v Rex (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor! To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R v Shershewcity (1912) C.CA 28 T.LR 364.

In view of the prescribed sentence I agree with the learned state counsel that the sentences were lenient in the circumstances of the case. I have no reason to interfere with same.

16. The upshot of the foregoing is that the appeal is dismissed.

DELIVERED and SIGNED at BUSIA this 10th Day of December, 2019.

KIARIE WAWERU KIARIE

JUDGE