



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MARSABIT**

**CRIMINAL APPEAL CASE NO. 15 OF 2019**

**GETAHENG ERISO.....1<sup>ST</sup> APPELLANT**

**KIBA MOMUA .....2<sup>ND</sup> APPELLANT**

**VS.**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

The appellants were charged with the offence of being illegally present in Kenya contrary to section 53 (1) as read with section 53 (2) of the Kenya Citizenship and Immigration Act, 2011. The particulars of the offence are that the appellants on the 21<sup>st</sup> day of September 2019 at Bubusa area in Marsabit North Sub-County within Marsabit County being Ethiopian citizens were found unlawfully present in Kenya without any valid permit.

The appellants pleaded guilty to both the charge and the facts and were sentenced to served one (1) year custodial sentence without option of a fine.

The appellants informed the court that they pleaded guilty to the offence. They are seeking the court's leniency and pray that they be repatriated back to their country.

Mr. Kihara, Prosecution Counsel, submitted that the conviction is proper. Counsel conceded that the one (1) year imprisonment sentence is excessive. The appellants are being fed by the National Government and are of no useful assistance to the Nation.

The record of the trial court shows that the appellants were arraigned in court on 23/9/2019. The plea was differed to 24/9/2019 as there was no Amharic interpreter. The charge was read over and explained to the appellants who understood the contents and opted to plead guilty. I do find that the plea is unequivocal and the conviction is proper.

Mr. Kihara, prosecution counsel, informed the court that the appellants are first offenders and have shown remorse. The sentence is excessive. Since the appellants have been in custody from 22/09/2019 when they were arrested, I do find that the period served of about 2 ½ months is sufficient punishment. The one (1) year imprisonment sentence is hereby set aside and replaced with the period already served.

The upshot is that the appeal on conviction is disallowed. The sentence is set aside and replaced with the period already served. The appellants shall be set at liberty and repatriated back to Ethiopia unless otherwise lawfully held.

**Dated and delivered at Marsabit this 3<sup>rd</sup> day of December 2019**

**HON. S. CHITEMBWE**

**JUDGE**