

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.69 OF 2018

AVTAR SINGH ALIAS ARTUR SINGH.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

R U L I N G

I have considered the Notice of Motion dated the 4/7/2018 filed in court on the 5/7/2018. I have also considered the supporting affidavit and the annexures. I note that the accused's plea was equivocal. The affidavit and the annexures explain what happened in court. He stated the passport was in Nairobi. The passport was stamped in Nairobi on the 29/6/2018. The Trial Court ought to wanted to establish the validity of his stay in country. The prosecution didn't oppose the application. They accept that the applicant had a valid passport at the time of plea and that the conviction was unsafe and that he should not have been convicted. As stated the Court having heard the accused state that his passport was in Nairobi he ought to have wanted to find out the outcome of the applicant's application for an extension. The applicant conviction was therefore unsafe and I therefore quash the conviction and sentence of the Court of 29/6/2016 at Kilgoris Principal Magistrate's Court No.465 of 2018. The conviction is quashed. The applicant will be refunded the sum of 100,000/= together with the bail deposited in court of 20,000/=.

No orders as to costs.

R. E.OUGO

JUDGE

17/7/2018

Court: Ruling read in open court before Ogutu for the applicant and Mr. Otieno for the Sate on the 17/07/2018 in Court.

R.E. OUGO

JUDGE

17/7/2018