



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

CRIMINAL APPEAL NO. 68 OF 2017

BETWEEN:

JOSEPH MUTUKU MUINDE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

(An Appeal from the Decision of Hon. Senior Principal Magistrate E. Nderitu, Senior Principal Magistrate's Court Voi on 27th January 2017)

1. Appeal admitted for Hearing on 30th November 2017. The Appellant filed his Petition for Appeal on 4th September 2017. He wishes to Appeal against conviction and sentence. He has filed MITIGATION GROUNDS OF APPEAL stating

1. He was a drunkard
2. He was a first offender
3. He is responsible for children
4. The sentence is too harsh

2. The Appellant was convicted on 17th January 2017 of the offence of making a false statement with intent contrary to **Section 20** of the **Prevention of Terrorism Act 2012** in the Senior Principal Magistrate's Court in Voi. The particulars of the offence are that he claimed to be a member of the Al Shabaab Group and was hired to undertake terrorist attacks during December 2016. He pleaded guilty. The offence was said to have been committed at Voi police station. The Appellant has never registered for an ID card.

He was sentenced to 5 years imprisonment.

3. Written submissions filed and considered.

4. The Appellant has appealed against conviction. As he pleaded guilty he cannot appeal against conviction.

5. The Appellant pleaded guilty. He was nonetheless sentenced to serve 3 years imprisonment. He now says he accepts what he did was foolish and regrets it. In the circumstances it can be said to that extent he has reformed.

6. The offence he was charged with is a serious offence and goes to the heart of social cohesion however a period of 5 years is manifestly excessive. It is true that his allegations and the consequent investigations led to a waste of police time. However, further imprisonment will not make separations. He has already spent more than 12 months in prison.

7. This court therefore orders that his sentence be reduced to the period already served. There should be a further period of 6 months community service where the Appellant shall be required by way of reparation attend at Voi police station on every Tuesday and Thursday and undertake such maintenance, repairs and general cleaning duties as the OCS shall consider necessary. In that way he will have an opportunity to make reparation.

It is so ordered.

FARAH S. M. AMIN

JUDGE

SIGNED DATED AND DELIVERED ON THIS the 16th day of October 2018.

In the presence of:-

Court assistant – Josephat Mavu

Appellant: in person

Respondent: Ms Anyumba