



## REPUBLIC OF KENYA

### IN THE HIGH COURT OF KENYA AT KITUI

#### CRIMINAL APPEAL NO. 26 OF 2018

1. BIGIRIMANA ERIC)

2. NIMPAGARITSE OLIVIER ).....APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from Original Conviction and Sentence in *Mutomo Senior Principal Magistrate's Court Criminal Case NO. 152 of 2018* by *Hon Z.J. Nyakundi (SPM)* on 5/4/2018).

#### J U D G M E N T

1. **Bigirimana Eric** (1<sup>st</sup> appellant) and **Nimpagaritse Olivier** (2<sup>nd</sup> Appellant) were jointly charged with **three counts** thus:-

**Count 1** - Being unlawfully present in Kenya contrary to section 53(1) (J) (2) of the **Kenya Citizenship and Immigration Act No. 12 of 2011**.

**Count 2** - Not being Kenyan citizens, engaging in employment without being authorized by work permit contrary to **section 53(1) (m) (2)** of the **Kenya Citizenship and Immigration Act No. 12 of 2011**.

**Count 3** – Failure to register as **Foreign National** contrary to **Section 56(2)** as read with **Section 56(3)** of the **Kenyan Citizenship and Immigration Act 2011** and **Regulations 46** of thereto.

2. They admitted the charges and were sentenced to pay a fine of **Kshs. 30,000/=** or in default to serve **one (1) year** imprisonment on **each count**. Sentences were to run **consecutively**.

3. Aggrieved, they now mitigate on **sentence** on the grounds that;-

- **They come from a humble background such that they cannot raise funds to pay the fines.**
- **They have families in their country (Burundi) that they support.**

4. At the hearing they prayed to be repatriated to their country.

5. The State through learned State Counsel, **Mr. Mamba** opposed the appeal. He urged that the sentence meted out was lenient.

6. I have considered rival submissions of both the Appellants and the Respondent (*State*). I also do note that a sentence passed by the **Lower Court** can only be interfered by the Appellate Court if it is illegal or unlawful (*see Ogolla s/o Owour versus Republic [1954] EACA 270*).

7. I have taken into consideration circumstances in which the offence was committed and the fact that the appellants have now served **seven (7) months imprisonment**. I therefore set aside the sentence meted out and reduce it to the term already served. Both appellants will be repatriated to **Burundi**, their country of origin.

**Dated, Signed and Delivered at Kitui this 4<sup>th</sup> day of December, 2018.**

**L. N. MUTENDE**

JUDGE