

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 324 of 2016

EMMANUEL INOBOMHE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant has once again returned to this court urging the court to further revise his custodial sentence of 18 months. The application is brought by way of Notice of Motion dated 20th December, 2016. It suffices to note that the Applicant had earlier moved the court seeking a revision of his initial sentence of 3 years vide a Notice of Motion dated 26th October, 2016. He was charged in the Chief Magistrate's Court at Nairobi in **Cr. Case No. 1650 of 2016** with two counts under the Kenya Citizenship and Immigration Act of 2011. In count I, he was charged with contravention of an order issued to a foreign national by the Cabinet Secretary contrary to **Section 56(3)**. In Count II, he was charged with being unlawful present in Kenya contrary to **Section 53(1)(j)** as read with **Section 53(2) of the Act**. He was convicted on his own plea of guilty and sentenced to 3 years imprisonment on each of the counts. The sentences were to run concurrently.

In a ruling of this court dated 21st November, 2016, the court revised the sentence downwards to 18 months imprisonment. Currently, he urges mitigating factors that he is ready to repatriate himself back to Nigeria. He has come to terms with the suffering of his immediate family members especially his young children who are of school-going age. So far, according to his counsel Mr. Swaka, he has served 7 months imprisonment.

The State through the leaned counsel Ms. Nyauncho opposed the application citing that the sentence had already been reduced reasonably. Besides, the court ought to note that the Applicant had disobeyed an Executive order to leave the country having been declared a prohibited immigrant. Learned counsel Mr. Swaka for the Applicant submitted that it was in the interest of the State and the taxpayers that the Applicant should not continue to remain in jail. The court was referred to its own ruling in the case of **Abimbola Justus Oyeleye alias Justus Abimbola Ogola V Republic [2016] eKLR**.

I have accordingly considered the application and the rival submissions. The sentence having been passed on 21st October, 2016, the Applicant has only served four and a half months in prison. He was arrested on 28th September, 2016. Cumulatively therefore, he has been in custody for five months and not seven months as submitted by Mr. Swaka. I also note that the trial magistrate rightly upon passing sentence ordered that the Applicant be repatriated to his home country, Nigeria. Having this in mind and as I also noted in the cited case law, it is not in public interest that the Applicant should remain in jail at the tax payers' expense whereas he can afford the air fare to Nigeria. Accordingly, the application is found meritorious.

In the end, I set aside the 18 months jail term and substitute it with an order that the Applicant has served sufficient sentence. He shall present to this court an air ticket detailing his travel schedule to Nigeria on 13th March, 2017 failing which the order of this court revising the sentence shall be recalled. The case will accordingly be mentioned on 13th March, 2017.

DATED and DELIVERED this **8th** day of **March, 2017**

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. Otieno h/b for Swaka for the Applicant*
- 2. M/s Nyauncho for the Respondent.*