

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL REVISION NO. 292 OF 2016

IBEAKAMMA CHUKWUNONSO

Alias RICARDO ANTONIO.....APPLICANT

VERSUS

REPUBLIC.....APPLICANT

RULING

The Applicant was charged with knowingly using a forged passport contrary to Section 54(1)(c) as read with Section 54(2) of the Kenya Citizenship and immigration Act, 2011 Laws of Kenya in that on 17th day of July 2016 at Jomo Kenyatta International Airport within Nairobi County being a Nigerian National was found possessing a Republic of Guinea passport number R0014642 whose biodata page was forged while arriving in Kenya from Lagos, Nigeria aboard Kenya Airways flight No. KQ533 using the said passport. He was convicted on his own plea of guilty and sentenced to pay a fine of Kshs. 300,00/= in default serve 12 months imprisonment. In addition, it was ordered that he be repatriated to his home country in Nigeria.

The application before this court is brought pursuant to Section 362 of the Criminal Procedure Code seeking a revision of the sentence. The grounds on which it is premised are that the Applicant is not in a position to pay the hefty fine and is willing to be repatriated at his own costs. He is also remorseful and promises to abide by the law in future.

I have considered the application. This is a case where the Applicant is not contesting the conviction. He is also not contesting the sentence per se save to state that the same was excessive as he cannot afford it. His mitigating factor in the revision is that he is ready to be repatriated back to his home country in Nigeria at his own cost. I find this an extremely good gesture not only to the court but to the tax payers in particular. It makes no sense to have him serve the entire sentence and upon completion will be repatriated after all, at the tax payers' expense. In confirming his good gesture and with the approval of the Respondent he has already purchased a one way air ticket to Lagos, Nigeria. He will travel on 25th September, 2016.

In the circumstances, I revise the sentence. I set aside the balance of it and substitute it with an order that the Applicant has already served sufficient sentence. He shall be repatriated to Nigeria at his own cost and with the facilitation of the Immigration Department. To facilitate the process, he shall, in the meantime, be remanded at Kileleshwa Police Station. The matter will be mentioned on 27th September, 2016 to confirm the repatriation. It is so ordered.

Dated and Delivered at Nairobi this 15th September, 2016.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *M/s Maloa holding brief for Mr. Ondieki for the Applicant*

2. *M/s Nyauncho for the Respondent.*