



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MALINDI**  
**CRIMINAL APPEAL NO.10 OF 2014**

*(Appeal from original conviction and sentence of Hon. C. M. Nzibe in Malindi CM Cr. No.179 of 2013)*

**LARBI JESSE APPIAH.....APPELLANT**

**VRS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was charged with three counts under the Kenya Citizenship and Immigration Act No.12 of 2011. The first count was that the appellant was unlawfully present in Kenya contrary to section 53 (1) of the Act. The particulars of the offence were that on the 20/7/2013 at Kijiwetanga Village in Malindi, Kilifi Sub-County, the appellant, being a Ghanian National was found being unlawfully present in Kenya in contravention of the Kenya Citizenship and Immigration Act.

The appellant was charged with engaging in occupation without being authorized by a work permit contrary to section 53 (1) (u) of the Act. The particulars of the offence were that on the date as in count one, the appellant was found engaging in an occupation namely drug addict rehabilitation without a work permit.

For the 3<sup>rd</sup> count, the appellant was charged for being in possession of a forged entry permit contrary to section 54 (1) (c) of the Act. The particulars of the offence are that on the date he was arrested, the appellant was found in possession of a forged entry permit number 648962 in contravention of the Act.

The appellant initially pleaded not guilty. After several mentions and adjournments, he changed his plea and pleaded guilty. He was sentenced to pay a fine of ksh.100,000/- or 18 months imprisonment for count one, fine of ksh.150,000/- or two years imprisonment for count II and a fine of ksh.200,000/- or 30 months imprisonment for count III. The sentence is to run consecutively.

The grounds of appeal are that the evidence adduced was full of contradictions, that the sentence is excessive since it is running consecutively, that no document was produced to prove the facts and that his mitigation was not considered.

Mr. Gicharu, counsel for the appellant submitted that there was serious infringement of the appellants rights under articles 49 and 52 of the Constitution. The investigating officer informed the court that the appellant was to be a witness and the charges were to be dropped. The issue was thereafter not followed. No document was produced. The sentence is punitive and ought to have run concurrently.

Mr. Nyongesa, prosecution counsel, opposed the appeal. Counsel contends that the plea of guilty is unequivocal. There is only a typing error for the proceedings when the appellant changed his plea. There

is no requirement to produce documents. Once the accused pleads guilty and confirms the facts to be correct, the court can convict. No rights were violated and at one time the appellant was represented by an advocate. There was another case of forgery whereby the appellant was to be a witness. Counsel conceded that there was no need to make the sentence run consecutively.

The record of the trial court shows that the appellant was arraigned in court on 22/7/2013. The charges were read over and the appellant pleaded not guilty. The appellant was communicating with the court in English. He was granted bond of ksh.30,000/- with one Kenyan surety of similar amount. Mr. Matini Advocate appeared for the appellant on 5/8/2013. The matter was mentioned several times until 4/3/2014 when the appellant informed the court that he wanted the charges to be read over again. The charges were read over in English language and the appellant pleaded guilty.

The case was adjourned to 6/3/2014 when the facts were read over to the appellant. He pleaded guilty to the facts. Given the record of the trial court, I do find that the plea was unequivocal. The language used was English and the appellant understands the language. The appellant had all the time to contemplate about the plea. The matter was adjourned for two days before the facts were read over to him. He once again pleaded guilty to the facts. It is true that the matter was adjourned several times but that does not make the trial process to be unfair. The delay cannot be held to be unreasonable. There was no violation of the appellant's rights.

With regard to the sentence, I do agree with both counsels that the sentence excessive. There was no need to make the sentence run consecutively as the several counts formed part of the same series of events. The appellant was also found rehabilitating drug addicts. At least this could have acted as a mitigating fact when sentencing the appellant. It is true that the facts showed that the appellant was found with a forged entry permit. The record shows that the appellant had entered Kenya through Jomo Kenyatta International airport with a valid passport. His initial entry permit expired. The extended permit was found to be forged. Counsel for the appellant maintains that under the Act, the accused should knowingly know that the permit is forged. That is the case but how would the court know that the accused did not know that the permit is forged, moreso, when the accused pleads guilty. The facts of the case are clear. The appellant knew that his entry permit was forged. He initially told the police that he had lost his passport and had a police abstract only to produce it later. He went ahead to register a company and was carrying out his activities without following the law.

The appellant was arrested on 20/7/2013. he was sentenced on 7/3/2014. Since then he has served over 18 months in prison. Since the date of his arrest, he has been in custody for over two years. I do find that to be enough punishment. The sentence for all the three counts is hereby set aside and replaced with the period already served. The appellant has served his sentence and should be set at liberty. However, since he is a foreigner, I do order that he be repatriated back to his home country as soon as possible.

Dated, signed and delivered at Malindi this 10<sup>th</sup> day of November, 2015, 2015.

**SAID J. CHITEMBWE**

**JUDGE**