



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL REVISION NO.8 OF 2014**

**ABDI MOHAMMED ALI.....APPLICANT/ACCUSED**

**VERSUS**

**REPUBLIC.....RESPONDENT/PROSECUTOR**

**RULING**

This case has been referred to this court for an order seeking to revise the decision on sentence entered by the Hon. S. M. Githinji, Chief Magistrate, Naivasha in C.M.CR.C.No.737 of 2014.

The application for revision is made under cover of a letter dated the 24th day of April, 2014 written by Mr. Macharia Mukiri acting on behalf of the accused person.

The accused person being of Somali origin was charged with the offence of being unlawfully present in Kenya contrary to **Section 53(1)(j)** as read with **Section 53(2)** of the **Immigration Act, Chapter 172 Laws of Kenya**.

The accused pleaded guilty and was convicted and sentenced to a fine of Kshs.300,000/= and in default of payment of the fine, to serve two (2) years imprisonment.

Counsel for the Accused prays for revision of the sentence on the grounds that the Accused is an elderly man, sickly and had travelled to Kenya seeking urgent medical attention. No indication is given by counsel for the accused as to the date the accused illegally ventured into Kenya to seek medical attention. Counsel contends that the accused was making his way back to Somalia *via* Kampala when he was arrested.

From the court record, the court notes that the doctor's letter is dated 7th March, 2014 and that the date of arrest was on the 14th March, 2014 which could mean that the accused person had been in Kenya for a period of seven (7) days.

This court finds that this is a suitable case for revision.

The factors that this court will take into consideration when revising the sentence is one that there is no minimum fine prescribed by the law. Secondly the age of the accused and that he had a letter in support of the fact that he was indeed seeking medical treatment. For those reasons, it is incumbent upon this court to give the accused person the fairest of treatment.

This court therefore orders the revision of the fine to the sum of Kshs.50,000/= with the usual default clause of two (2) years imprisonment. Upon payment of the fine or completion of sentence, the accused to be repatriated to Somalia.

The accused is cautioned that in future he must respect the laws of the host country and ensure that he travels with adequate travel documents at all time.

It is so ordered

**Dated, Signed and Delivered at Nakuru this 5th day of May, 2014.**

**A. MSHILA**

**JUDGE**