



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.71 OF 2014**

**ABDIRIZAK HASSAN.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant was charged with the offence of **Obtaining Registration by False Pretences** contrary to **Section 320** of the **Penal Code**. The particulars of the offence were that on 14<sup>th</sup> April 2014 at Kajiado Registrar of Persons office in Kajiado County, the Applicant willfully and unlawfully, by false pretence, being a Somali national, attempted to procure registration as a Kenya citizen and was issued with a Kenya acknowledgment card. When the Applicant was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was convicted on his own plea of guilty and sentenced to serve one (1) year imprisonment.

The Applicant has moved this court under **Sections 362** and **364** of the **Criminal Procedure Code** seeking to invoke the court's revisionary jurisdiction to review the sentence that was imposed upon him. The Applicant states that the sentence that was imposed on him was the maximum sentence provided by the law yet he was a first offender. He pleaded with the court to review the sentence. He stated that he was a refugee and should not be repatriated. He told the court that he was remorseful and should therefore be treated with leniency. Ms. Aluda for the State submitted that the sentence was lawful. She stated that since the Applicant had offered to be repatriated, the court should issue an appropriate order of repatriation after the Applicant has served his sentence.

This court has carefully evaluated the facts of this case. The Applicant pleaded guilty to the charge. He is not challenging his conviction. He is challenging the sentence. He is of the view that the maximum sentence of one (1) year imprisonment was uncalled for in view of the fact that it was his first time for him to commit such an offence. Ms. Aluda for the State is convinced that the sentence is legal. This court is of the view that, taking into consideration the entire circumstances of the case, the sentence that was imposed on the Applicant was harsh. It was the first time that the Applicant had been convicted of such an offence. The Applicant has served six (6) months imprisonment of the sentence that was imposed on him. This court is of the view that the Applicant has been sufficiently punished. His sentence is commuted to the period already served. The only issue that remains for determination is whether the Applicant should be repatriated back to Somalia. This court is aware that any Somali from Somalia in Kenya is a prima facie refugee. The Applicant cannot therefore be repatriated to Somalia since the security situation has not stabilized. The Applicant shall therefore be released to the custody of Director of Refugee Affairs and UNHCR so that he can be transported either to Daadab or Kakuma Refugee Camps. It is so ordered.

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF NOVEMBER 2014**

**L. KIMARU**

**JUDGE**