

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.37 OF 2014

CRYIL STANLEY CHIDUBEN alias JAMES WAISWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Cryil Stanley Chiduben is a Nigerian national. He was charged with the offence of **possessing a passport that purports to establish his identity** contrary to **Section 54(1)(L)** of the **Kenya Citizenship and Immigration Act, 2011**. The particulars of the offence were that on 11th May 2014 at Jomo Kenyatta International Airport, being a Nigerian national and a holder of Nigerian Passport No.02621127, for purpose of departing Kenya to China, the Applicant identified himself as a Ugandan national and produced a Ugandan passport No.B1111635 to an immigration officer at Jomo Kenyatta International Airport purporting to be a Uganda National and a holder of the said passport, a fact the Applicant knew was false and misleading. When the Applicant was arraigned before the trial court, he pleaded guilty to the charge. He was convicted of his own plea of guilty and sentenced to serve three (3) years imprisonment. The court further ordered that after the Applicant has served his sentence, he be repatriated to Nigeria.

While in prison, the Applicant applied to this court to revise the sentence that was imposed upon him by the trial court. He was of the view that, being a first offender, the sentence imposed on him was harsh and excessive. He had pleaded guilty to the charge because he wished to save the court valuable judicial time. He pleaded with the court to release him so that he can go back to his country of origin. He explained that he had committed the offence because he was misled. He urged the court to exercise leniency on him. During the hearing of the application, the Applicant reiterated the contents of this application. Ms. Aluda for the State did not oppose the request by the Applicant to have his sentence commuted to the period already served provided that the Applicant pays for the cost of his deportation out of the country. The Applicant informed the court that he had the means to purchase a one-way ticket back to Nigeria.

This court has considered the facts of this application. Under **Section 362** of the **Criminal Procedure Code**, this court has power to call and examine the record of any criminal proceedings before a subordinate court for the purpose of satisfying itself of the correctness, legality or propriety of any finding, sentence or order. In the present application, **Section 54(2)** of the **Kenya Citizenship and Immigration Act, 2011** provides the sentence for anyone found guilty of an offence committed under **Section 54(1)** of the Act to pay a fine of Kshs.5 million or to serve a term of imprisonment not exceeding five (5) years or both. In the present application, the court is persuaded that the sentence of three (3) years imprisonment imposed on the Applicant was harsh and excessive. The facts of this case did not warrant the Applicant to be sentenced to serve such term of imprisonment. This court is of the opinion that the six (6) months period that the Applicant has been in prison is sufficient punishment. This court therefore commutes the sentence of the Applicant to the period already served.

As regard the second aspect of the sentence, this court directs that upon release from prison, the Applicant shall be handled over to the Directorate of Immigration services who shall ensure that the Applicant is deported back to his country of origin, Nigeria at his own cost.

DATED AT NAIROBI THIS 5TH DAY OF DECEMBER 2014

L. KIMARU

JUDGE