



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Criminal Revision 19 of 2012

JOHN CHINI ALI *alias* JOHN KIMANI

MATHAI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

NDENT

RULING

1. This application is dated 5<sup>th</sup> March 2012. It is based on grounds that the learned trial magistrate failed to consider that the applicant pleaded guilty to the charges so as to save the court's time and should have benefited from a noncustodial sentence. Further that the learned trial magistrate failed to consider the passionate mitigation of the applicant and proceeded to impose an exorbitant fine.
2. The applicant also urged that he has been unable to pay the fine imposed by the court and is therefore languishing in jail. That he is sick and in need of constant medication and special diet. And finally, that he stands to suffer irreparably if he is made to serve the two years imprisonment imposed in default of payment of fine.
3. In his oral submission argued on the 20<sup>th</sup> June 2012, the applicant pleaded for the court's mercy on sentencing, urging the court to reduce the sentence, as well as the fine to Kshs.150,000/= which he could pay by cashing in his air ticket.
4. From the record, I note that the applicant pleaded guilty to the charges of knowingly misleading an Immigration Officer seeking information material to the exercise of his powers contrary to **Section 53(1) (a)** of the **Kenya Citizenship and the Immigration Act, 2011** in count I, and for knowingly making a false declaration for the purpose of obtaining a Kenyan passport contrary to **Section 54 (1) (a)** of the **Kenya Citizenship and Immigration Act, 2011** Laws of Kenya in court II.
5. Parliament enacted legislation which provides stiff punishment for offences under the **Immigration Act** to safeguard the integrity and security of this country. The sentences which were imposed by the learned trial magistrate were lawful by virtue of **Section 53 (2)** of the **Immigration Act** in count I. Upon conviction for any of the offences under **Section 53** of the **Immigration Act, Section 53(2)** thereof provides that a person shall be liable to a fine not exceeding Kshs.500,000/- or to imprisonment for a term not exceeding three years or to both.
6. Any person convicted of offence under **Section 54** of the **Immigration Act** shall be liable to a fine not exceeding Kshs. 5,000,000/= or to imprisonment for a term not exceeding five years or to both.
7. An appellate court will not interfere with the sentence imposed by a trial court unless it is found to be illegal or manifestly excessive. The applicant herein was fined Kshs.200,000/= in default to serve 12

months imprisonment in count I, and Kshs.1,000,000/= in default to serve 12 months imprisonment in count II. These sentences were not illegal and I am not persuaded they are excessive or harsh in any way.

For the foregoing reasons, I therefore decline to grant the application sought. The application stands dismissed.

**SIGNED DATED** and **DELIVERED** in open court this **4<sup>th</sup>** day of **July** 2011.

**L. A. ACHODE**

**JUDGE**