

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CRIMINAL REVISION NO. 23 OF 2017

***(Originating from Criminal Case No. 373/2016 Kisutu Resident
Magistrate)***

ERICK KABANGA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING:

The applicant Erick Kabanga has preferred the present application seeking this court's intervention to revise the proceedings and judgment of Kisutu Resident Magistrates' Court which imposed an illegal sentence on him after he pleaded guilty to the offence of unlawful presence in the Country contrary to Section 31(1) & (2) of the Immigration Act.

Miss. Masue, learned State Attorney who appeared for the Republic conceded to the application on the ground that the sentence imposed on the applicant was illegal. She argued that the provisions of S.31(2) of the Immigration Act provide for the sentence of a fine of Shs. 100,000/= or imprisonment of 3 years.

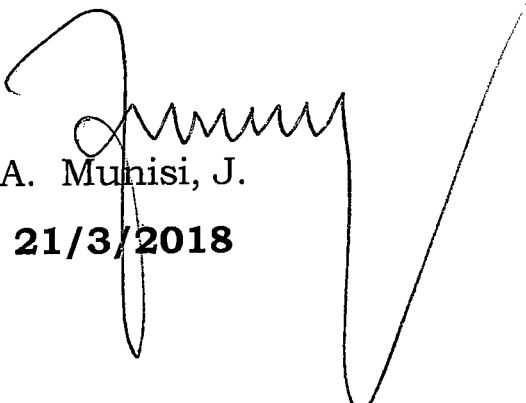
I have given due consideration to the applicant's application. I have no doubt the sentence imposed was illegal. From the record, applicant pleaded guilty to the offence and there is nothing to show that he had entered the country prior to this offence, he thus deserved lenience as a first offender.

Miss Masue was of the view that applicant deserved leniency because the evidence presented showed that he had been in the country for hardly two days. I subscribe fully to Miss. Masue's views.

I have not been able to understand why the trial court imposed such a hefty punishment. All considered I set aside the illegal sentence imposed by the trial court.

Accordingly, I will impose a sentence that will lead to the immediate release of the applicant from prison. In view of the nature of the offence that he was convicted with, let the prison's department surrender him to the Immigration department to be dealt with according to Immigration laws.

He is otherwise to be released forthwith from prison unless there are other lawful causes.



A. Munisi, J.

21/3/2018