

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(KIGOMA DISTRICT REGISTRY)**

AT KIGOMA

CRIMINAL REVISION NO. 4 OF 2019

(From Original Criminal Case No. 242 of 2019 of the District Court of Kasulu at Kasulu)

BIZIMANA S/O EDWARD.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

J U D G M E N T

Dated: 16/10/2019 & 16/10/2019

I.C. MUGETA, J.

The applicant was convicted of his own plea of guilty to the offence of unlawful presence in Tanzania c/s S.45 (1) (i) and (2) of the Immigration Act [Cap. 54 R.E. 2002]. He was sentenced to pay a fine of Tshs 700,000/= or imprisonment for a term of two years in default, the applicant failed to pay the fine. He is in prison serving the jail term. While therein, a Judge in the capacity of a Justice of the Peace visited the prison. The applicant complained that being a first offender and having pleaded guilty to the offence, the sentence of imprisonment is undeserved. The visiting judge, following the complaint, ordered opening of these



proceedings to consider the correctness, legality and propriety of the proceedings, finding and sentence.

On the hearing date, Antia Julius, learned State Attorney, appeared for the Republic. She submitted that having reviewed the proceedings of the trial court, there is no error which can justify any interference by this court. She was just concerned with the justification of the sentence which she said despite being lawful it does not meet justice of the case. The learned State Attorney argued that the sentence is not just because keeping a foreigner in our prison costs the Nation unnecessarily in terms of the prisoner's upkeeps. In her considered view, and I agree, it is cheaper to deport a foreigner prisoner who is unlawfully present in the country than to imprison him for failure to pay fine. For this reason she prayed that the jail sentence be substituted by orders amounting to immediate release of the complainant. In reply the applicant supported the learned State Attorney. I cannot agree more with the learned State Attorney. It defies logic and economic costs arithmetics to keep a foreigner prisoner in prison for failure to pay a fine on an offence of being unlawfully present in the contrary. Orders for deportation are more desirable in the circumstances of such cases. For the foregoing, I hereby uphold the conviction. I however, substitute the imprisonment sentence with orders for immediate deportation of the applicant to his home country, Burundi





A handwritten signature in blue ink, appearing to read "Mugeta".

I.C. MUGETA,

JUDGE,

16/10/2019

Court: Delivered in chambers in the presence of the applicant and Antia Julius State Attorney for the Republic.

Sgd: I.C. MUGETA,

JUDGE,

16/10/2019