

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(Kigoma District Registry)

AT KIGOMA

CRIMINAL REVISION NO. 22 OF 2019

(Original Criminal Case No. 226 of 2019 of the District Court Kasulu

before C.A. Mushi-RM)

ARISTIDE S/O IHOGOLA1ST APPLICANT

SWAIBA S/O NGENDAKUMANA2ND APPLICANT

NKURUNZINZA S/O DIOMED3RD APPLICANT

SHIMIRIMANA S/O JAMAL4TH APPLICANT

HATUNGIMANA S/O JAMAL VIANE5TH APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

J U D G M E N T

17/10/2019 & 17/10/2019

I.C. MUGETA, J.

This is a revision "*suo moto*" following a complaint by the accused persons who were convicted of being unlawfully present in Tanzania c/s 45 (1) (i) and 2 of the Immigration Act [Cap. 54 R.E. 2002]. For convenience, these proceedings shall retain titles of the parties at the lower court. The

Mgeta

Republic shall remain prosecutor, and the complainants shall be referred to as accused persons.

The accused persons are Burundian who pleaded guilty to the charge. They were sentenced to a fine of Tshs 500,000/= or a six months jail imprisonment in default. They failed to pay the fine hence they are serving the jail term. Their complaint which led to the opening of these proceedings is that being first offenders, their imprisonment is undeserved. They complained to a Judge who visited the prison and upon the complaint be ordered opening revision to consider the correctness legality and propriety of the proceedings finding and sentence of the lower court.

On the hearing date, Antia Julius, learned State Attorney, appeared for the prosecutor. The accused persons were in person. The learned State Attorney supported the conviction and argued further that the procedures followed towards conviction and sentence are correct according to the law. On sentence, however, she submitted that the same, though being lawful, it does not reflect justice of the case in that having failed to pay the fine, the accused persons are a burden to the whole Nation for being fed in prison without production. She submitted and prayed that the jail term imprisonment as alternative to the fine, should be substituted with order of deportation. In deed that order was made by the trial magistrate but it shall be effective upon completion of the jail term. In their reply, the accused persons agree with the learned state attorney that they should be deported with immediate effect.

I also agree with the learned State Attorney. If the ultimate result of the court order is to deport the accused persons, there is no point in their waiting to complete their imprisonment sentence. As rightly put by the learned State Attorney, that is unnecessary burden on the Nation to keep them pending completion of the jail term. On this account, I hereby quash the sentence of imprisonment and substitute it with an order of immediate deportation of the accused persons to Burundi. I so order.




I.C. MUGETA,
JUDGE,
17/10/2019

Court: Judgment delivered in chambers before Antia Julius, for the Republic and the accused persons present in person.

Sgd: I.C. MUGETA,
JUDGE,
17/10/2019