IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(Kigoma District Registry)

AT KIGOMA

CRIMINAL REVISION NO. 37 OF 2019

(Originating from Criminal Case No. 251/2019 Of Kasulu District Court BEFORE I.D. BATENZI)

KORODE S/O DOMINIKO............................ APPLICANT

VERSUS

REPUBLIC ....RESPONDENT

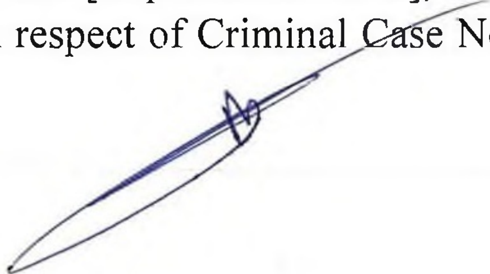
JUDGMENT

16/10/2019 & 21/10/2019

MATUMA, J.

This is a revision "***suo motto***" by the court following some complaints by the applicant to the Criminal Justice committee during their visit of inmates in the Prison in which the applicant is being held. The applicant pleaded guilty to the charge of Unlawful Presence in Tanzania, contrary to section 45 (1) (i) and (2) of the Immigration Act, Cap. 54 R.E 2016 upon which he was convicted and sentenced to pay a fine of Tshs. 700,000/= or in default to serve a jail term of two years.

The applicant's specific complaint is on the sentence meted to him. He is complaining that he was a first offender, therefore ought to have been forgiven.Such complaint was brought to this Court and under Section 372 of Criminal Procedure Act [Cap. 20 R.E 2002], the Court called the records of the trial court in respect of Criminal Case No. 234 of 2019 at



Kibondo District Court to satisfy itself of the merits or otherwise of the complaints.

At the hearing of this revision the applicant was present in person while the respondent had the service of Mr. Matitu learned Senior State Attorney. The applicant had no substantive argument in support of the revision but ended praying for his sentence to be reduced.

The learned Senior State attorney on his party had no objection for the sentence of the applicant to be reduced taking the circumstances upon which the applicant was arrested.

Having gone through the records of the trial court I have observed that the applicant being a national of Burundi was on the 31stDay of July, 2019 at noon hours found at Makere village within Kasulu District in Kigoma Region in The United Republic of Tanzania without any permit which isContrary to Section 45 (1) (i) and (2) of the ImmigrationAct supra.

Basically, the conviction of the appellant is not contested but the sentence. Under the charged provisions, the minimum fine is Tshs. 500,000/= and in default of the fine the prescribed custodial sentence is that of maximum of three years. The applicant was sentenced to pay a fine of only Tshs. 700,000/= and in default to serve a custodial sentence of two years. The applicant failed however to pay such a fine. He is thus serving a custodial sentence of two years. The principles of sentencing requires the convict to benefit the minimum sentence unless some circumstances in the relevant particular case demands otherwise. In the instant case the trial Magistrate did not state the grounds upon which he decided to severely punish the applicant. He was very aware that the sentence he imposed was very severe when he himself stated in the proceeding during the sentencing;

"Despite the fact that, the accused is a first offender, and that he has been convicted on his own plea of guilty, this court severely sentences

the accused. Thus the accused is hereby sentenced to pay Tshs. 700,000/= in default to serve an imprisonment of two years in jail."

In the circumstances, the trial magistrate was wrong to enter a severe sentence against the applicant without stating the reasons behind as to why the applicant did not deserve the lenient sentence. I would thus interfere and reduced the sentence to that which would lead to an immediate release of the applicant. I thus order the Applicant to be released from Prison unless otherwise held for some other lawful cause. Since the applicant is a foreign national, it is hereby ordered that he is immediately deported back to his home country.

It is so ordered.

A. MATUMA
JUDGE
21/10/2019