

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(Kigoma District Registry)

AT KIGOMA

CRIMINAL REVISION NO. 39 OF 2019

(Originating from Criminal Case No. 157/2019 Of Kasulu District Court

Before C.A. Mushi - RM)

DESIRE S/O NDAGIJIMANA APPLICANT

VERSUS

REPUBLIC RESPONDENT

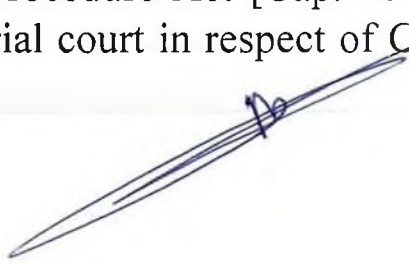
JUDGMENT

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. 500,000/= or in default to serve a jail term of one year.

The applicant’s specific complaint is on the sentence meted to him. He is complaining that he was a first offender and that he came in Tanzania just to find some money to construct the house, 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. 157



of 2019 at Kasulu 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 lamented that on the very date he was convicted, there were fellow Rundis who were as well convicted of the same offence. He wondered to see that he was sentenced to imprisonment of one year while his fellows were sentenced to three months. He ended submitting that he is in prison since 29/05/2019 which is over four and a half months, and that his fellow convicts have already served the three months and gone.

The learned 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.

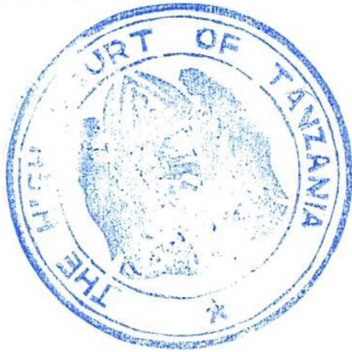
Having gone through the records of the trial court I have observed that the applicant being a national of Burundi was on the 12th Day of May, 2019 at about noon hours found at Mugeru area within Kasulu District in Kigoma Region in The United Republic of Tanzania without any permit which is Contrary to Section 45 (1) (i) and (2) of the Immigration Act supra.

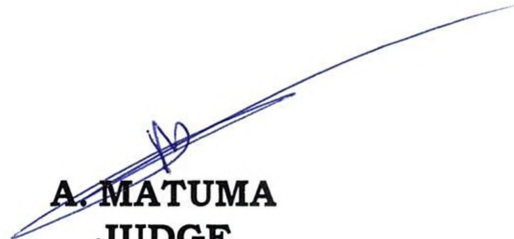
Basically, the conviction of the appellant is not contested but the sentence. Under the charged provisions, the minimum fine is Tshs. 500,000/= and in default of the fine the prescribed custodial sentence is that of maximum of three years. The applicant was sentenced to pay a fine of Tshs. 500,000/= and in default to serve a custodial sentence of one year. In law the sentence meted on him was legal. He has failed however to pay such a fine. He is thus serving a custodial sentence of one year. That in itself is a clear indicator that the applicant is in a hard-economic situation.

In the circumstances, by taking into considerations of the mitigating factors of the applicant at the trial, the sentence meted on him is hereby

reduced 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. And by considering that 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