**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT KIGOMA**

**(Kigoma District Registry)**

**CRIMINAL REVISION NO. 2 OF 2020**

*(Original Criminal Case No. 152 of 2019 of the District Court of Kasulu)*

**FADHILI S/O PAPII OMARI .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

*22/06/2020 & 23/06/2020*

**BEFORE: A. 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 Kasulu District 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. 1,000,000/=** or in default to serve a jail term of three years.

The applicant's specific complaint is on the sentence meted to him. He is complaining that he was a first offender and 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 the respect of Criminal Case No. 152 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 absent while the respondent had the service of Mr. Riziki Matitu learned Senior State Attorney.

The learned Senior State Attorney on his party had the view that the complaints on the sentence meted to the applicant have merits because the maximum fine to a person convicted of the offence is Tshs. 500,000/= but the applicant was condemned to pay a fine of Tshs. 1,000,000/= which is over and above the statutory minimum fine.

The learned Senior State Attorney further observed that even the three years custodial sentence is the maximum sentence which is contrary to the principle of sentencing. He further argued that despite of the anomalies he pointed out, even the conviction of the appellant was uncalled for as he was convicted on his own plea of guilty but without facts having been produced in support of the charge. He therefore asked this court to quash the conviction and set aside the sentence and since the applicant has spent a year and a month in prison, he be ordered to be repatriated to his home country; The Democratic Republic of Congo.

Having gone though the records of the trial court and listened to the submission of the learned Senior State Attorney, I entirely agree with the observations of the learned Senior State Attorney.

The applicant being a national of The Democratic Republic of Congo was on 7th day of May, 2019 at morning hours found at Lusunwe Barrier within Kasulu District-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.

Under the charged provisions, the minimum fine is **Tshs. 500,000/=** and in default of the fine the prescribed custodial sentence is that of

maximus of three years. The applicant was sentenced to pay a fine of **Tshs 1,000,000/=** and in default to serve a custodial sentence of three years. He failed to pay the fine and thus he is in prison serving the custodial sentence of three years and has already spend a year and a month.

Without dwelling on the legality or otherwise of the sentence meted on the Applicant, I find it better to determine first the correctness or otherwise of his conviction.

The Applicant was arraigned on the 09/05/2019 before Hon. I.D. Batenzi (RM). When the charge was read and explained to him, he pleaded guilty. The facts of the case was then read and when he was asked to plead on the facts, he denied them all stating that he had a permit. In his words on record he stated;

***"I have heard and understood the facts. All what stated is not true as there is a permit which allowed me to travel from Dar es salaam to Uvira."***

The learned trial Magistrate in the circumstances of the plea of the applicant on the facts, he ordered the accused to re-arraigned as he has disputed the facts;

***"For what the accused is alleging it seems he disputes some of the facts. In the regard I call upon the Prosecution to re-arraign the accused"***

The accused was re-arraigned, the charge was re-read to him and he again pleaded guilty and the court entered a Plea of Guilty. This time the court did not call the prosecution to adduce the facts but it proceeded to convict and enter the sentence as herein above stated.

As rightly submitted by the learned Senior State Attorney, that was procedurally wrong. It is the practice that whenever an accused pleads guilty to the charge, the prosecution must adduce facts in support of the charge since the facts stands as summary of the evidence which would have otherwise produced had the case been heard on merit.

Since the applicant averred to be in possession of a permit, it was wrong for the court to assume the plea of the applicant to the charge was that of guilty. It should have entered plea of not guilty and call for a full trial to accord the applicant to enter his defence and produce for scrutiny of the court the alleged permit. The court thus wrongly convicted the applicant purportedly on his own plea of guilty. Such conviction cannot stand and is accordingly quashed. As the conviction is quashed, I can see no need to determine the legality or otherwise of the sentence, the same is set aside for want of proper conviction.

In the circumstances, by taking into consideration of the fact that the applicant has already served an illegal sentence to the period exceeding a year, I join hands with the learned Senior State Attorney that the circumstances of this case does not call for a retrial but an order that the applicant be immediately repatriated to his home country DRC. I thus order the Applicant to be released from Prison unless otherwise held for some other lawful cause and having been released, be repatriated forthwith as herein above stated. It is so ordered.

**A. Matuma**

**Judge**

**23/06/2020**