

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

CRIMINAL REVISION NO. 5 OF 2020

*(Originating from Criminal Case No. 106/2020 Kigoma District Court
Before: Hon. K.V. Mwakitalu - RM)*

ALLY MUSTAFA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

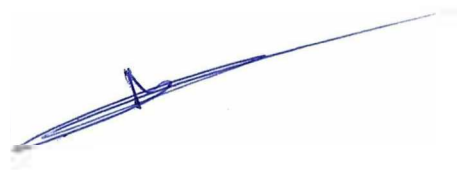
11/11/2020 & 11/11/2020

A. MATUMA, J

This Revision was commenced by the Court suo moto following the normal inspection by the Deputy Registrar in the District Court of Kigoma in which he noted that Ally Mustafa the Applicant was convicted of **Escaping from Lawful custody contrary to section 116 and 35 of the Penal Code**. He was sentenced to suffer three years custodial sentence which the Deputy Registrar considered illegal as it contravened the prescribed sentence under section 35 (supra).

At the hearing of this Revision the applicant appeared in person and the respondent republic was represented by Clement Masua learned State Attorney.

The learned State Attorney supported the Revision submitting that the sentence was in fact illegal.



On his party the Applicant prayed for the sentence to be reduced.

I have considered the arguments of the parties and the records at hand. I am satisfied that items of section 35 of the Penal Code (supra), the maximum sentence is two years, or fine or both. It was thus illegal to sentence the applicant to three years.

I thus reduce the sentence from three years meted to him to only two years which is the maximum sentence.

I have also noted that the escape was done in a very bad move as the Prison Officer Incharge of the inmates was robbed a gun ASAR No. TZPS 6818112201 by the applicant and his fellows.

In the circumstances, in addition to the two years custodial sentence, I order the applicant to suffer five strokes of the cane. The corporal punishment shall be executed after the expiry of three days and if no notice of appeal shall have been lodged.

Right of appeal fully explained and the notice against corporal punishment is to be filed within three days if any.

It is so ordered.




A. Matuma

Judge

11/11/2020