



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL APPEAL NO. 26 OF 2018

1. BIGIRIMANA ERIC)

2. NIMPAGARITSE OLIVIER).....APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from Original Conviction and Sentence in Mutomo Senior Principal Magistrate's Court Criminal Case NO. 152 of 2018 by Hon Z.J. Nyakundi (SPM) on 5/4/2018).

J U D G M E N T

1. **Bigirimana Eric** (*1st appellant*) and **Nimpagaritse Olivier** (*2nd Appellant*) were jointly charged with **three counts** thus:-

Count 1 - Being unlawfully present in Kenya contrary to section 53(1) (J) (2) of the **Kenya Citizenship and Immigration Act No. 12 of 2011**.

Count 2 - Not being Kenyan citizens, engaging in employment without being authorized by work permit contrary to **section 53(1) (m) (2)** of the **Kenya Citizenship and Immigration Act No. 12 of 2011**.

Count 3 – Failure to register as **Foreign National** contrary to **Section 56(2)** as read with **Section 56(3)** of the **Kenyan Citizenship and Immigration Act 2011** and **Regulations 46** of thereto.

2. They admitted the charges and were sentenced to pay a fine of **Kshs. 30,000/=** or in default to serve **one (1) year** imprisonment on **each count**. Sentences were to run **consecutively**.

3. Aggrieved, they now mitigate on **sentence** on the grounds that:-

- **They come from a humble background such that they cannot raise funds to pay the fines.**
- **They have families in their country (Burundi) that they support.**

4. At the hearing they prayed to be repatriated to their country.

5. The State through learned State Counsel, **Mr. Mamba** opposed the appeal. He urged that the sentence meted out was lenient.

6. I have considered rival submissions of both the Appellants and the Respondent (*State*). I also do note that a sentence passed by the **Lower Court** can only be interfered by the Appellate Court if it is illegal or unlawful (*see Ogolla s/o Owour versus Republic [1954] EACA 270*).

7. I have taken into consideration circumstances in which the offence was committed and the fact that the appellants have now served **seven (7) months imprisonment**. I therefore set aside the sentence meted out and reduce it to the term already served. Both appellants will be repatriated to **Burundi**, their country of origin.

Dated, Signed and Delivered at Kitui this 4th day of December, 2018.

L. N. MUTENDE

JUDGE



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