



Case Number:	Criminal Appeal 1446 of 1986
Date Delivered:	15 Jun 1989
Case Class:	Criminal
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	David Christopher Porter
Citation:	Tarimo v Republic[1989] eKLR
Advocates:	Appellant absent not wishing to be present Onyango for the Respondent
Case Summary:	<p><b>Tarimo v Republic</b></p> <p><b>High Court, at Nairobi</b></p> <p><b>June 15, 1989</b></p> <p><b>Porter J</b></p> <p><b>Criminal Appeal No 1446 of 1986</b></p> <p><i><b>Criminal Practice and Procedure</b> – repatriation – accused convicted and sentenced for theft of motor vehicle under Penal Code (cap 63) section 278A – trial magistrate making “order of repatriation” of accused – whether magistrate having jurisdiction to make such order – Penal Code section 26A.</i></p> <p>The appellant was tried in a magistrate’s court and convicted for theft of a motor cycle contrary to section 278A of the Penal Code (cap 63).</p> <p>In addition to sentencing the appellant to 12 months imprisonment and 6 strokes of the cane, the magistrate made an “order of repatriation” against him.</p>

	<p>The appellant appealed.</p> <p><b>Held:</b></p> <ol style="list-style-type: none"> <li>1. The trial magistrate had no jurisdiction to make an order for repatriation.</li> <li>2. The magistrate only had jurisdiction to make recommendation to the Minister that the appellant be removed from and remain out of Kenya.</li> <li>3. The appellant had been properly convicted and his sentence was not excessive.</li> </ol> <p><i>Order of repatriation set aside and substituted.</i></p> <p><b>Cases</b></p> <p>No cases referred to.</p> <p><b>Statutes</b></p> <p>Penal Code (cap 63) sections 26A, 278 A</p> <p><b>Advocates</b></p> <p>Appellant absent not wishing to be present</p> <p><i>Onyango</i> for the Respondent</p>
Court Division:	Criminal
History Magistrates:	B Okaya (Miss)
County:	Nairobi
Docket Number:	-
History Docket Number:	Criminal Case No 2955 of 1986
Case Outcome:	appeal against conviction and sentence dismissed.
History County:	Nairobi
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT**

**AT NAIROBI**

**(CORAM: PORTER J)**

**CRIMINAL APPEAL NO 1446 OF 1986**

**BETWEEN**

**TARIMO..... APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

*(Appeal from the original conviction and sentence of the Resident Magistrate's Court at Nairobi, B Okaya (Miss) dated 14th October 1986, in Criminal Case No 2955 of 1986)*

June 15, 1989, **Porter J** delivered the following Judgment.

The appellant was convicted in the court below of theft of a motor cycle contrary to section 278A of the Penal Code, and sentenced to 12 months imprisonment and 6 strokes. The learned trial Magistrate purported to make an order for repatriation.

One day after the theft, the appellant was seen riding as a passenger on the stolen motor bike by two Police Officers who saw them twice. On the first occasion they saw them turn off into the bush when approaching a road block, and later emerging from a side road when they abandoned the motor cycle and ran off.

The learned trial Magistrate was satisfied with these identifications, and on my own assessment of the record I would agree. It was daylight, and the distance involved was not far. The evidence negated the account of the appellant. The appellant was properly convicted and sentence was not excessive.

As to the purported order for repatriation, the learned trial Magistrate gets his jurisdiction for such an order from S 26 A of the Penal Code. He has no jurisdiction to make an order for the repatriation of the appellant.

He only has jurisdiction to make a recommendation to the Minister that the appellant be removed from and remain out of Kenya either immediately, or upon completion of any sentence of imprisonment imposed.

In this case, I would agree with the learned trial Magistrate that such a recommendation is required in this case. But I would not agree with his way of making the order. The matter remains in the discretion of the Minister.

The “order for repatriation” is therefore set aside and an order is substituted that the court recommends to the Minister that the appellant be removed from and remain out of Kenya after his release.

Otherwise, appeal against conviction and sentence dismissed.

**Delivered this 15th day of June, 1989**

**PORTER**

**JUDGE**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**



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