

HONG KONG / JUDGMENT

# HKSAR v. IDIMUGU CHIKA

## COURT

Court of First Instance

## DECIDED

11 May 2007

## CASE / FILE NUMBER

HCMA156/2007

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bjbj HCMA156/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO.156 OF 2007 (ON APPEAL FROM STCC12358 OF 2006)

BETWEEN HKSAR Respondent and IDIMUGU CHIKA Appellant alias SIBANDA CHELESANI alias GEZANI GERARD

Before : Deputy High Court Judge D. Pang in Court Date of Hearing : 24 April 2007 Date of Judgment : 24 April 2007 Date of Reasons for Judgement : 11 May 2007

## REASONS FOR JUDGMENT

AUTONUMOUT The appellant was convicted on his own plea of one charge of breaching a deportation order contrary to section 43(1)(a) of the Immigration Ordinance, Cap.

115. He was sentenced to 20 months imprisonment 10 of which are to run consecutively to the 14 year term that he is serving. The appellant appeals against that sentence. AUTONUMOUT On 19 November 1996, the appellant, a Nigerian, was made the subject of a lifetime deportation. On 7 March 2004, he returned to Hong Kong on the strength of a Malawian passport and 11 days later, was arrested for the offence of drug trafficking. This brought about the detection of the index offence and the 14 year term just mentioned. A check on his criminal record further revealed that he had a previous conviction for breaching his deportation in November 2000, this time using a Zimbabwean passport. AUTONUMOUT Before me, the appellant's complaint is simple. He pointed out that for the index offence, the normal starting point is 27 months, not 30 months as the magistrate had adopted. Secondly, he said the index offence and the one for drug trafficking should have been dealt with together and if they had, the two sentences would have been concurrent. AUTONUMOUT The case of

HKSAR v. Cortez Emily Bisoy [2002] 2 HKLRD 762 is of course authority for the 27 month starting point. But as the magistrate had pointed out, he was entitled to increase it to 30 months to take account of the appellant s previous breach. For an offence of this nature, two repetitions should surely render the offender a recidivist. That is my judgment. As regards the appellant s second point, I will simply say it is misconceived. Whether or not they were dealt with on the same occasion, the passing of partly consecutive sentences for two totally unconnected offences cannot be open to criticism. AUTONUMOUT The appeal is dismissed. ( D. Pang ) Deputy High Court Judge Ms Winnie Lam, GC of Department of Justice, for HKSAR The Appellant, in person PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#\$`#\$ m\_IP m\_IP m\_IP m\_IP m\_IP m\_IP m\_IP m\_IP m\_IP & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 26 October 2026 · Esheria