

TANZANIA / JUDGMENT

gerald nturuzabuhoro vs republic

2019 tzhc 2171 23 october 2019

COURT
TZHCDECIDED
23 October 2019

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA (Kigoma District Registry) AT
KIGOMA CRIMINAL REVISION NO. 25 OF 2019 (Originating from Criminal Case No. 138/2019 Of
Kasulu District Court Before I.D. Batenzi - RM) GERLAD S/O NTURUZABUHORO.....
APPLICANT VERSUS REPUBLIC..... RESPONDENT

JUDGMENT

15/10/2019 & 23/10/2019 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 the 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. 700,000/= or in default to serve a jail term of one year. 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 respect of Criminal Case No. 138 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 M/S Mayupgd learned Senior State Attorney. 1 The learned State attorney on his party had no objection for the sentence of the applicant to be reduced taking the circumstances upon which the applicant was arrested. Having gone through the records of the trial court I have observed that the applicant being a national of Burundi was on the 23rd Day of April, 2019 at about morning hours found at Nyarugusu area within Kasulu District in 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. Basically, the conviction of the appellant is not contested but the sentence. Under the charged provisions, the minimum fine is Tshs. 500,000/= and in default of the fine the prescribed custodial sentence is that of maximum of three years. The applicant was sentenced to pay a fine of Tshs. 700,000/= and in default to serve a custodial sentence of one year. In law the sentence meted on him was legal. He has failed however to pay such a fine. He is thus serving a custodial sentence of one year. That in itself is a clear indicator that the applicant is in a hard- economic situation. In the circumstances, by taking into considerations of the mitigating

factors of the applicant at the trial, the sentence meted on him is hereby reduced to that which would lead to an immediate release of the applicant. I thus order the Applicant to be released from Prison unless otherwise held for some other lawful cause. Since the applicant is a foreign national, it is hereby ordered that he be deported back to his home country, Burundi. It is so ordered. 2

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