

TANZANIA / JUDGMENT

hatungimana odasi and another vs republic 2019 tzhcld 281 23 october 2019

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23 October 2019

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA REVISIONAL JURISDICTION (Kigoma District Registry) CRIMINAL REVISION NO. 35 OF 2019 (Originating from Criminal Case No. 239/2019 Of Kasulu District Court)

1. HATUNGIMANA S/O ODASI
2. FILBERT S/O MICHAEL APPLICANTS VERSUS REPUBLIC
RESPONDENT 15/10/2019 & 23/10/2019 MATUMA, J.

JUDGMENT

This is a revision “suo motto” by the court following some complaints by the applicants 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 2002 upon which they were convicted and sentenced to pay a fine of Tshs. 50,000/= or in default to serve a jail term of six months. The applicants specific complaint is on the sentence meted to them. They are complaining that they were first offenders and had pleaded guilty, 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. 239 of 2019 at Kasulu District Court to satisfy itself of the merits or otherwise of the complaints. At the hearing of this revision the applicants appeared in person while the respondent had the service of M/S Mayunga learned Senior State Attorney. The applicants had no substantive argument in support of the revision. They merely ended praying for the sentence to be reduced and that they won't repeat to come in Tanzania without permit. The learned State attorney on his party had no objection for the sentence of the applicants 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 applicants being a national of Burundi was on the 13 Day of July, 2019 during night hours found at Makere village 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 supra. Basically, the conviction of the applicants 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 however sentenced to pay a fine of only Tshs. 500,000/= and in default to serve a custodial sentence of six months. They have failed to pay such amount as a fine. They are thus serving a custodial sentence of six months. That in itself is a clear indicator that the applicants are in a hard-economic situation. In the circumstances, the custodial sentence is reduced to that which would lead to an immediate release of the applicants. I thus order the Applicants to be released from Prison unless otherwise held for some other lawful cause and they be deported back to their home country, Burundi.

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