



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL APPEAL CASE NO. 16 OF 2008**

BETWEEN:

- 1. COSMAS KWARAMBA**
- 2. GERALD KWELEPETA**

VERSUS

REPUBLIC

CORAM: HON. JUSTICE TWEA

J. Phillip State Advocate for the State
Convicts present and unrepresented
Mrs P. Mangison, Official Interpreter

J U D G M E N T

Twea, J

This is an appeal from the judgment of the First Grade Magistrate. The two convicts appeared before the First Grade Magistrate sitting at Mwanza on a charge containing three counts: false declaration of citizenship, false declaration for a passport and uttering false documents contrary to Section 33(1) of the Malawi Citizenship Act, Section 327 and 360 of the Penal Code respectively. They both pleaded guilty. They were sentenced to pay fines of K20,000 and K5,000 on the first and second counts respectively and to 20

months imprisonment on the third count. They appealed against the sentence on the third count.

The appellants filed two grounds of appeal: that the lower court did not give due weight to mitigating factors and that the sentence was excessive. The facts of this case are not disputed at all.

The second appellant Cosmas Kwaramba is a Zimbabwean national. He is a holder of a Zimbabwean passport. However, during his sojourn to the Republic of South Africa he overstayed his residence permit. Consequently he was declared a prohibited immigrant. This rendered his passport invalid for legal entry into the Republic of South Africa.

The first appellant: Winston Trevor Nkusa, is a Malawian national. He traveled to Zimbabwe to condole some relatives. He met the second appellant who told him of his plight. He decided to help the second appellant obtaining a Malawi passport. They traveled together to Malawi for the said purpose.

The first appellant invented new particulars for the second appellant. The name was changed to Cosmas Mkwamba. Further he procured an identity card for a faith based organization for the second appellant, who was documented to be deaf and dumb and to be under his care and control. The official forms for the ***“Application for a Republic of Malawi Passport”*** were duly completed by the two appellants, stamped by the District Commissioner’s Office and a Malawi Passport was duly issued. The fraud was uncovered at the Mwanza border when the second appellant wanted to exit Malawi. Hence this charge

I have taken time to illustrate the circumstances of this case because one ground of appeal is that the trial Magistrate did not give due weight to mitigating factors in the case. I do not agree. The trial magistrate took great care when sentencing the appellants. The record shows that his opinion on sentence is 32 pages long and very elaborate. He took into account the aggravating factors from the conspiracy in Zimbabwe, traveling to Malawi to execute it, the obtaining of false identities using faith based organizations. Concocting disability and the second appellant presenting himself as a deaf and dumb person to the authorities. He also considered the dangerous and effect of foreigners obtaining Malawi passport. The

resultant erosion of international confidence in Malawi passport. The added cost for Malawians when traveling outside this region. In the end the lower court considered that the appellants pleaded guilty, are first offenders and that the first two counts were misdemeanors. If counsel had taken time to read the court record, he would not have alleged that the court did not consider the mitigating factors. The fact of the matter is that the court found that the aggravating factors were overwhelming in this case I agree with him.

I have considered the sentence and I find that it was lenient enough. I would have imposed a longer sentence taking into account the soliciting and cross - border element, I therefore reluctantly confirm it.

The appeal against sentence on the third count therefore fails.

Pronounced in open Court this 3rd day of June, 2008 at Blantyre.

E.B Twea
JUDGE