



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISC CRIMINAL APPLN. NO. E304 OF 2021**

**THOMAS BAZAR MAYEKU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. In his undated Notice of Motion filed in court on 10<sup>th</sup> September 2021, the applicant *Thomas Bazaar Mayeku* approached this court seeking the following orders:

- i. That he be granted reasonable cash bail/bond in CR Case Nos. 2544 of 2020 and 2659 of 2020 under *Article 49 (1) (i)* of the *Constitution*.
- ii. That the cash bail/bond granted in CR Case No. 3252 of 2015; CR Case No. 2544 of 2020 and CR Case No. 2659 of 2020 be consolidated.
- iii. That the court lifts the warrant of arrest in CR Case No. 3552 of 2015.

2. In the Notice of Motion and in his supporting affidavit, the applicant contended that he was charged with the offence of obtaining money by false pretences in CR Case No. 3552 of 2015 and he was granted bond of KShs.200,000 and an alternative of cash bail of KShs.50,000.

3. While out on bond, he was arrested and charged in CR Case No. E056 of 2020 at Mombasa Law Courts. He remained in custody in that case till 27<sup>th</sup> October 2020. Upon his release, he was arrested again and charged jointly with another person in Criminal Case Nos. 2544 of 2020 and 2659 of 2020 before the Madaraka Chief Magistrate's Court. He claimed that in these two cases, his co-accused was granted a cash bail of KShs.100,000 or an alternative of bond of KShs.500,000 with surety but he was denied bond on grounds that he should first settle the matters before the Mombasa Law Courts before his application for bond was considered.

4. Further, the applicant claimed that in CR Case No. 3552 of 2015, he was granted a cash bail of KShs.50,000 or bond of KShs.200,000 but he was unable to attend court on the dates he was in custody vide the criminal case registered in Mombasa. A warrant for his arrest was issued and his cash bail forfeited to the state. The applicant further claimed that when he eventually appeared before the court and explained reasons for his non attendance, the trial magistrate refused to reinstate his cash bail.

5. In his oral submissions in support of his application, the applicant re-iterated the averments in his application and supporting affidavit and further requested this court to grant a consolidated cash bail to apply to CR Case No. 3552 of 2015; 2544 of 2020 and 2659 of 2020 after reinstating cash bail previously ordered in CR Case No. 3552 of 2015. He urged that the application be allowed because he was very sick.

6. The application is opposed by the state. Learned prosecuting counsel *Ms Chege* contested the application on grounds that the applicant was facing similar charges of obtaining by false pretences in several cases and if released, he was likely to commit another offence; that he was a Ugandan national and if released, he was likely to leave the court's jurisdiction.

7. In his riposte, the applicant admitted that he was a Ugandan national but denied that he was a flight risk arguing that he cannot abscond as his passport was held in a Makadara Court.

8. I have considered the prayers in the applicant's Notice of Motion and the rival submissions made by both parties. I have also thoroughly perused the original record of the lower court in each of the aforesaid three criminal cases. I have confirmed the applicant's contention that in CR Case No. 3552 of 2015, his cash bail of KShs.50,000 was forfeited to the state on 28<sup>th</sup> August 2019 after he failed to attend court at a time when he claims he was in custody at Shimo La Tewa Prison in connection with another case. The trial court did not consider whether or

not to lift the warrant of arrest or reinstate his cash bail since the prosecution expressed an intention to make an application for cancellation of his bond terms. The application was apparently never filed.

9. In CR Case No. 2544 of 2020, the court record shows that the applicant's co-accused was granted a cash bail of KShs.150,000 with two contact persons but the court after being informed of other cases pending against the applicant ordered that his bond terms be set by the trial court. A perusal of the court record does not show that the applicant applied for bond pending trial before the trial court. He cannot therefore be heard to say that he was denied bail/bond in that case.

10. Lastly, the lower court record in CR Case No. 2659 of 2020 reveals that the applicant's prayer for bond pending trial was put in abeyance to await determination in CR Case No. 3552 of 2015 whether his bond terms in that case would be cancelled.

11. After considering the applicant's application and the records in the three criminal cases aforesaid, I find that though it is true that he satisfactorily explained his failure to attend the court in CR Case No. 3552 of 2015 and his cash bail ought to have been reinstated by the court trial, I am unable to accede to his request to reinstate the said cash bail and in addition to grant him a consolidated cash bail to apply to the three cases for the reason that I have come across a ruling delivered by *Hon. Kimaru J* in Misc CR Appln No. 102 of 2016 in which the Hon Judge made a finding that the applicant was a flight risk having absconded in Kiambu CMC Criminal Case No. 718 of 2013.

12. The Hon. Judge proceeded to order that the applicant be remanded in custody till the case in the trial court was concluded. The ruling did not however specify the criminal case it related to in the Makadara Law Courts but I note from the proceedings in CR Case No. 3552 of 2015 that the said ruling was referred to by the learned trial magistrate in that case. The applicant did not disclose the existence of this ruling to this court which is an indication that he did not approach this court in good faith.

13. Given the aforesaid finding which was made by a court of concurrent jurisdiction coupled with the fact that it is not disputed that the applicant is a Ugandan national who has several criminal cases pending against him in which he is charged with the offences of obtaining money by false pretences or related offences, I am persuaded to find that the applicant is indeed a flight risk.

14. The primary consideration in deciding whether or not to admit an accused person to bond/bail is whether the accused will turn up for his trial. The finding that the applicant is a flight risk means that there is a probability that if released, he will not avail himself for trial. This is a compelling reason to justify denial of bond/bail.

15. For the foregoing reasons, I decline to grant the orders sought by the applicant. I instead order that he should remain in custody until the three cases pending against him before the Makadara Chief Magistrate's Court, namely CR Case Nos. 3552 of 2015; 2544 of 2020 and 2659 of 2020 are heard and determined.

16. Having made the above finding, in order to balance the applicant's constitutional right to liberty and the public interest in having suspected offenders prosecuted for their alleged crimes; and the rights of the victims of the offences preferred against the applicant, I order that the lower court files be remitted to the lower court with a direction that the trial in the three cases be expedited and to be concluded within the next 12 months. To that end, the cases to be mentioned before the Chief Magistrate, Makadara Law Courts on 7<sup>th</sup> April 2022 for further orders.

17. As the applicant claims to be sick, he shall be accorded treatment in the remand prison's health facilities.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF MARCH 2022.**

**C. W. GITHUA**

**JUDGE**

**In the presence of:**

Applicant present

Mr. Kiragu for the respondent

Ms Karwitha: Court Assistant