

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL DIVISION

CRIMINAL REVISION NO. E006 OF 2021

1. MIKE KAINGA KAZUNGU

2. SAMUEL KASSIM RAMADHAN

3. SALLY SAFARI KAZUNGU.....APPLICANTS

VERSUS

REPUBLIC Thro' THE DIRECTOR

OF PUBLIC PROSECUTION.....RESPONDENT

RULING

1. Mike Kainga Kazungu Samuel Kassim Ramadhan and Sally Safari Kazungu are jointly charged in Shanzu CMC CR. Case No. E192 of 2021 with the offence of forcible entry contrary to Section 90 as read with Section 36 of the penal code in Count I and assault cause of actual bodily harm contrary to Section 251 of the penal code.

2. They pleaded not guilty and were granted bond of Kshs.1,000,000/= each with a surety of a similar amount or cashbail of Kshs.500,000/= each.

3. The applicants through their advocates letter dated 8th February 2021 prayed that this court revises the bond terms as the same are excessive and punitive in consideration that the offences for which applicants have been charged are misdemeanors and constitute an infringement of the applicants constitutional rights to be released on bail on reasonable terms and conditions and be presumed innocent until proven guilty.

4. The Respondents were served but they didn't respond. Ms. Karanja informed the court that Mr. Fedha prosecuting counsel who was in conduct of the matter was yet to consult the counsel conducting trial at Shanzu Law Courts. The court gave the Respondents 3 days to file and serve submissions but the reply or even submissions have not been filed.

5. I have considered the application for revision and the fact that the offence of forcible entry is a misdemeanor which maximum sentence is 2 years with or without a fine and the offence of assault provides that convict is liable to a maximum of 5 years. I do find that the bond terms imposed are excessive given the fact of the existence of *Malindi High Court ELC No. 21 of 2020 – Lien Estates Developers Ltd vs Juma Okumu & Chief Land Registrar and Mombasa H.C. ELC No. 243 of 2020. Kensington Estates Ltd vs Lien Estates Development Ltd & Others* which are directly related with the criminal cases herein.

6. In the circumstances, I do hereby revisit the bond terms to Kshs.100,000/= each with surety of similar amount with an alternative of cashbail of Kshs.10,000/= each.

Dated, signed and delivered at Mombasa this 25th day of February, 2021 by Microsoft Teams/Open Court.

HON. LADY JUSTICE A. ONG'INJO

JUDGE