



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

(Coram: Odunga, J)

MISC. CRIMINAL APPLICATION NO. E074 OF 2021

EDEH IKECHEKWU KINGSLEY....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(From original order in Mavoko Chief Magistrate's Court Criminal Case No. E263 of 2020 (Hon. B. Kasavuli, PM, PM on 27th October, 2021)

BETWEEN

REPUBLIC.....PROSECUTOR

- VERSUS -

EDEH IKECHEKWU KINGSLEY.....ACCUSED

RULING

1. The applicant herein, **Edeh Ikechekwu Kingsley**, was charged before Mavoko Chief Magistrate's Court Criminal Case No. E263 of 2020 an offence to which he pleaded not guilty. A formal application for release on bond was then made which was opposed by the prosecution and a reserved ruling made on 15th December, 2020. By that ruling, the trial court allowed the application and granted the applicant a bond of Kshs 400,000.00 plus one surety of similar amount. In addition, it was ordered that the applicant would deposit his passport No. Axxxx in court pending the hearing and final determination of the case.

2. However, on 7th January, 2021 when the surety appeared before the trial court for approval, the same was objected to by the prosecution which objection was upheld by the trial court and the court declined to approve the surety. On 27th October, 2021, the matter once again came before the trial court for bond approval. The same was once again opposed by the prosecution on the ground that the passport was a counterfeit. The trial court then declined the approval of the surety and directed that the applicant remains in custody being of the persuasion that the applicant might be or posed a high flight risk.

3. I have considered the application dated 15th November, 2021 which, rightly in my view, was not opposed by **Mr Ngetich**, learned counsel for the prosecution. In my view, once an accused person is admitted to bond, the court cannot under the guise of approving the bond terms purport to reverse its order on bond. In other words, approval of bond terms is not the same thing as the grant of bond. Until an order admitting an accused to bond is procedurally reversed, an accused person who meets the terms of the bond ought to be allowed to enjoy the constitutional rights.

4. In the premises I allow the application and set aside the order made on 27th October, 2021 to the extent that it purported to reverse the admission of the applicant on bond. For avoidance of doubt the order made on 15th December, 2020 is still in force.

5. It is so ordered.

READ, SIGNED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF DECEMBER, 2021

G.V. ODUNGA

JUDGE

Delivered in the presence of:

The Applicant Online

Mr Kimathi for the Applicant

Mr Ngetich for the Respondent

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