



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

MISC. CRIMINAL APPLICATION NO.E011 OF 2020

DENNIS KIMUTAI SANG.....APPLICANT

- V E R S U S -

REPUBLICRESPONDENT

R U L I N G

1. The Applicant in this Revision Application dated 17/11/2020 is seeking the following orders:-

i. THAT this Application be certified urgent and service of this Application be dispensed with in the first instance(SPENT).

ii. THAT pending the hearing, and determination of this Application inter partes, this Court be pleased to admit the Applicant herein, DENNIS KIMUTAI SANG, to bail/ and or bond on such reasonable terms as the court shall deem fit.

iii. THAT the Honourable Court be pleased to stay proceedings and to call for and examine the record of the Hon. Magistrate in KERICHO CRIMINAL CASE NO.E157 of 2020 REPUBLIC -VS- DENNIS KIMUTAI SANG for the purposes of satisfying itself as to the correctness, legality and propriety of the orders of the Court issued on 13th November, 2020.

iv. THAT this Honourable Court do exercise its discretion in revision of the Orders/Directions by the Hon. E. Karani made on the 13th day of November, 2020 wherein the Hon. Magistrate ordered the continued detention of the Accused for an inordinate period of seven days and declined to grant bail to the Accused/Applicant in contravention of the Applicant's constitutional rights.

v. THAT any other orders this Honourable Court may deem fit and just to grant.

2. The grounds relied on are that the Applicant was charged with two counts. The first being malicious damage to property Contrary to Section 339(i) of the Penal Code and Creating Disturbance in a manner likely to cause a breach of the peace Contrary to Section 95(i) of the Penal Code.

3. Further that the two offences are bailable Under Article 49 (i) (f) of the Constitution if there are no compelling reasons not the Applicant bail.

4. It is also stated in the grounds that the Applicant and the Complainant have lived peacefully and even raised children and further that the Applicant is not a flight risk.

5. I have perused the Original Court record being Kericho Criminal Case No.E157of 2020 and I find that the Applicant was arrested on 12/11/2020 and arraigned in Court on 13/11/2020 and he was charged with two counts namely Malicious Damage to property Contrary to Section 339(1) of the Penal Code and Creating Disturbance in a manner likely to cause a breach of the peace Contrary to Section 95 (1) of the Penal Code.

6. The Prosecution made an oral application opposing bail stating that there were compelling reasons not to grant the Accused Person bond.

7. The Investigating Officer filed an Affidavit to oppose bail and the Defence also filed a Replying Affidavit and the Trial Court called for a pre-bail report and deferred its ruling to 20/11/2020.

8. I find that the Application is premature as the Trial Court has not made any order or ruling to warrant a revision by this Court.

9. Section 362 of the Criminal Procedure Code states that:-

“The High Court may call for and Examine the record of any Criminal Proceedings before any subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate Court.”

10. This provision is not meant to Micro-manage the Trial Court but to check any irregularities or illegalities in the Trial Court’s finding, sentence or order.

11. In the current case, I find that the Trial Court is yet to rule on the issue of bail and this Court cannot at this stage curtail the Trial Court’s Exercise of it’s discretion or make a finding as to whether or not there are compelling reasons to deny the applicant bail

12. I accordingly direct that the file be placed before the Trial Court for purposes of making a determination whether or not to admit the applicant on bail pending the trial of his case.

Delivered, signed and dated at Kericho this 19th day of November 2020.

A. N. ONGERI

JUDGE