



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**HC.CR. REV.NO. 6 OF 2019**

**JOHN GABRIEL MULE.....1<sup>ST</sup> APPLICANT**

**PETER NZESYA MAITHYA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

1. The Applicants have moved this court by way of a letter dated 03/05/2019 by Manthi Masika & Co Advocates for purposes of revision under Article 165(3) (6) and (7) of the Constitution and Section 362 & 363 of the Criminal Procedure Code. The Applicants would want this court to examine Makueni SPM's Cr. case No. 193 / 2019 and 190/2019, in respect to bail/bond terms.

2. In exercise of the supervisory jurisdiction bestowed upon this court over subordinate courts, I have indeed called for the two files and examined them. One **Lazarus Kahingi Munguti** was charged vice Cr. Case No. 190/2019 on 16/04/2019 when plea was taken. He was charged with the offence of abuse of office and was released on a bond of Kshs.200,000/= with a surety or cash bail of Kshs.100,000/=.

3. The next day (17/04/2019) vide Cr. Case No.193/2019 **John Gabriel Mule** was charged with making a document without authority and abuse of office. A 3<sup>rd</sup> count was in respect of **John Gabriel Mule** and **Peter Nzesya Maithya** who were charged with conspiracy to defraud. The accused in Cr.193/2019 were each given a bond of Kshs.800,000/= with a surety or cash bail of Kshs.500,000/=.

4. These two matters are related and to confirm that on 6<sup>th</sup> May, 2019 the two cases were consolidated with Cr. No. 193/2019 being withdrawn. A new charge sheet was presented to court with all the three accused persons being jointly charged in criminal case no.190/2019 with various offences.

5. After taking the plea for the three accused persons the court made the following order. **"The bond terms given earlier remain"**. This is the order that is contested by the Applicants. A close scrutiny of the proceedings shows that **Lazarus Kahingi** who was the initial accused in Cr.No.190/2019 and is the 2<sup>nd</sup> accused in the consolidated charge sheet is facing two counts and yet his bond terms are the more friendly ones.

6. **John Gabriel Mule** who is the 1<sup>st</sup> accused in the consolidated charge sheet faces three (3) counts while **Peter Nzesya Munguti** the 3<sup>rd</sup> accused faces only one count. Both the 1<sup>st</sup> and 3<sup>rd</sup> accused have been each released on the cash bail of Kshs.500,000/= or a bond of Kshs.800,000/= and a surety.

7. On the face of the record there is no justification for the varied bond terms yet the accused are jointly charged. It was the duty of the learned trial magistrate to harmonise the bond terms after taking plea in the consolidated charge sheet. This would avoid a scenario where one accused person appears to enjoy preferential treatment over the others, as is the case here.

**8. I therefore review the bond terms in respect of accused 1 and accused 3 and set them aside. Each accused shall be released on the bond terms initially granted in Makueni SPM's cr. case No.190/2019. For avoidance of doubt, each accused shall be released on a bond of Kshs.200,000/= with a surety or a cash bail of Kshs.100,000/=.**

Orders accordingly.

**DELIVERED, SIGNED AND DATED THIS 23<sup>RD</sup> DAY OF MAY, 2019 IN OPEN COURT AT MAKUENI.**

**H. I ONG'UDI**

**JUDGE**