

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.177 OF 2017

REPUBLIC.....APPLICANT

VERSUS

MOHAMED ZAFRULLA KHAN.....RESPONDENT

RULING

The Applicant, the Director of Public Prosecutions seeks clarification of the orders issued by the trial court in **Nairobi Chief Magistrate’s Court Criminal Case No.1163 of 2017 Republic -vs- Mohamed Zafrulla Khan & 7 Others** wherein the trial court gave orders which the prosecution interpreted to mean that the Respondent could travel out of the country, particularly to the United States of America, during the pendency of the trial. The Director of Public Prosecutions informed the court that if the Respondent is granted permission to travel out of the country, there was a chance that he would not return back to the country. This is because, the Applicant’s family were citizens of the United States of America, and further, the Applicant had property in the said country. The Applicant is apprehensive that if the Respondent’s passport is released to him to travel out of the country, he will abscond and will not likely appear before the court during trial. It was in that regard that the Applicant is seeking clarification of orders issued by the trial court to the effect that the Respondent’s passport should remain detained in court during the pendency of the trial as part of the conditions attached to his release on bail pending trial.

On his part, the Respondent filed a replying affidavit in which he opposed the basis upon which the Applicant filed its application before this court. He categorically stated that, in compliance with the terms that were imposed by the trial court to secure his release on bail pending trial, he was ordered to surrender his passport to the court. The fears expressed by the Applicant to the effect that the trial court had granted him permission to travel out of the country was misplaced because it is not possible for him to travel out of the country without his passport. For the moment he had no intention of travelling out of the country. He urged the court to dismiss the application.

During the hearing of the application, this court heard rival submission made by Mr. Mungai for the Applicant and Mr. Wena for the Respondent. This court has carefully considered the said submission. That this court has jurisdiction to call any file pending before a magistrate’s court in a criminal case for the purpose of ascertaining the legality of any order issued therein is without doubt. **Section 362** of the **Criminal Procedure Code** grants this court jurisdiction to call for and examine the record of any trial court in a criminal case in order to satisfy itself of the legality, propriety and regularity of any such proceedings. In the present application, the Applicant expressed reservations with the orders issued by the trial court. The Applicant formed the impression that the trial court had granted permission to the Respondent to travel out of the country during the pendency of the trial. The Respondent disputed this fact. He wondered how he would travel out of the country yet his passport had been deposited in court.

Unfortunately, the Applicant did not annex a copy of the Ruling that it seeks this court to revise in exercise of its supervisory jurisdiction. Nonetheless, it emerged that the trial court had indeed ordered the Respondent to surrender his passport before the court as a condition for his release on bail pending trial. The Respondent explained that at the moment he had no intention of travelling out of the country and if need be, he would request the trial court to release the passport to him. This court agrees with the Respondent that the application that the Applicant has filed is premature as the Respondent cannot travel out of the country without seeking the trial court’s permission to do so.

In the premises therefore, this court finds no merit with the application. It is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 27TH DAY OF JULY 2017

L. KIMARU

JUDGE