



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAMIRA**  
**MISC. CRIMINAL APPLICATION NO.2 OF 2016**

**BENARD OMBOGA NYAEGA.....APPLICANT**

**-VERSUS-**

**STATE.....RESPONDENT**

**RULING**

This application is brought by Bernard Omboga Nyaega to be set at liberty pending the hearing and determination of his case in the subordinate court. This sets out seven (7) grounds thereof for his application. These are:

- A. The applicant herein had been released on bond pending the hearing and determination of his case in the subordinate court.**
- B. That during the cross-examination a prosecution witness, it arose that the names of the applicant were not the ones appearing on the charge sheet.**
- C. That the applicant herein did not breach any bond terms and conditions set by the subordinate court.**
- D. That the applicant was detained pending verification of identity from the Directorate of *Criminal* investigations at Nairobi.**
- E. That the period of 21 days for the report to be produced in court lapsed**
- F. That the applicant is still detained at Kisii Prisons and as such his detention is unlawful.**
- G. That the state will not suffer any prejudice if the applicant is released pending the hearing and determination of his case in the subordinate court.**

The genesis of this matter was that in a charge sheet, one John Mong'are Nyaega was charged for grievous harm contrary to **Section 234 of the Penal Code, on both Counts I, II & III** respectively.

However, upon cross-examination in his **Criminal Case No. 323 of 2014**, it turned out that the accused was known as Bernard Omboga Nyaega, I/D No.12898522.

The person charged being John Mong'are Nyaega was given bond of Kshs.100,000 with one surety.

On 2<sup>nd</sup> December 2015 in view of the development of the real identity of the accused person, the trial

magistrate, despite bond terms, that the accused be remanded in Kisii prison on 16/12/2015 until the report of the registrar of persons is received to clarify the identity situation. To date this report has not been obtained.

The accused person when charged and before the hearing and determination of his case is deemed and presumed innocent and thus the constitution accords him/her the right to bond, see **Article 49 (i) (h) of the constitution**.

The issue of identity must be sorted out in one way or the other. Being remanded is not helpful to sorting out the identity issue. This could still be sorted out while the accused is out on bond.

The court is of the view that the registrar of persons cannot be influenced by the accused person.

### **FINDINGS**

This court, accordingly, will set the accused at liberty on bond terms as originally set but will enhance the same to include Kshs.30,000 cash bail.

The accused to attend court every month for mention of his case until the hearing and determination of his case in the subordinate court.

It is so ordered.

**Dated at Nyamira this 14th day of March, 2016.**

**C. B. NAGILLAH**

**JUDGE**

**In the presence of:**

Nyamwange hold brief for the applicant

Malesi for the Respondent

Mercy - Court Clerk