



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.105 OF 2016

NASIR HAIDERALI JESSA1ST APPLICANT

ZURFIKAR HAIDERALI JESSA.....2ND APPLICANT

NARGIS AZIZ JESSA.....3RD APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

THE RESIDENT MAGISTRATE'S COURT

(ANTICORRUPTION COURT).....2ND RESPONDENT

RULING

The application before me is by Notice of Motion dated 29th March, 2016 seeking a review of bail terms against the three Applicants who were charged alongside three others in the Chief Magistrates Court at Nairobi in Cr. Case No. 478 of 2016. Apart from the three Applicants, the other accused persons were released on a cash bail of Kshs. 3 million each. In the respect of the three Applicants, each of them was granted a cash bail of Kshs. 5 million or a bond of a similar amount with two sureties of a similar amount.

While opposing the application herein, learned State Counsel Ms. Atina submitted that in the respect of the three Applicants who were the 3rd, 4th and 5th Accused persons respectively, they faced a serious offence in count I of conspiracy to defraud Imperial Bank Ltd the sum of Kshs. 9 Billion. Whereas I agree that the bail terms are commensurate with the offence in that the charge involves a colossal sum, it is important to bear in mind that an accused is always deemed innocent unless otherwise proven. Whereas it is stated that the amount of Kshs. 29 Billion related to the three Applicants, I have looked at the handwritten ruling on bail by the learned trial magistrate which indicates that the 1st and the 2nd accused persons who were also charged in Count I were granted a bail of Kshs. 3 million. There is no explanation as to why there was that big disparity in the bond terms granted. Uniformity in granting bail/bond should be adhered to so that a court is not deemed to be influenced by extraneous matters.

Having observed that, as rightly submitted by counsel for the Applicant Mr. Kimanthi for the 1st

Applicant and Ms. Singh for the 2nd and 3rd Applicants, the antecedent of the Applicants is a factor for consideration. It was not disputed that before they were charged they cooperated with the investigations and even presented themselves voluntarily for plea. After the plea, they were given a moderate cash bail of Kshs. 500,000/= pending a substantive ruling on bail, they still presented themselves to court. I do not think that this is the time they are a flight risk particularly having regard that their passports were deposited to court. Accordingly, I find this as a good case in which the bail terms for the three Applicants should be reviewed.

In the end, the three Applicants are hereby admitted each to a cash bail of Kshs. 3 million. In the alternative, each shall deposit a bond of an equal amount with two sureties of a similar amount to be assessed by the trial court. It is so ordered.

DATED and DELIVERED this 29th day of **April, 2016**

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Kimanthi for the 1st Applicant*
2. *Glorius holding brief for Ms. Singh for the 2nd and 3rd Applicants*
3. *M/s Atina for the Respondent.*