



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
MISC CRIMINAL APPLICATION NO. 30 OF 2016

MOSES CHARO KOMBE alias PASTORAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

This application for review has been brought by way of Notice of Motion dated 11th March, 2016 by M/s Selina Egesa and company Advocates for the applicant.

This application seeks the calling of magistrate's criminal case No 114 of 2010, at Shanzu, Republic Vs Moses Charo Kombe alias Pastor, examine it and satisfy itself as to the correctness, legality and propriety of the order which was made in the said case on 13th of February, 2016, denying the applicant bond/bail.

The grounds set out in this application are that;

1. the applicant has been in remand since 3rd February, 2016, awaiting the hearing and determination of criminal case number 114 of 2016 at Shanzu law courts, Mombasa, Republic vrs Moses Charo Kombe alias pastor and 8 others.
2. that the applicant is charged with 8 others who were released on bond terms between 3rd February, 2016 to 10th March, 2016.
3. that the applicant is entitled to be released on bond/bail as there are no compelling reasons to deny him such right.
4. that no relevant and credible evidence has been rendered to prove the allegations against the applicant that he is a habitual offender with a probability of committing other offences;
5. that the applicant has continually been denied his freedom when no compelling reasons exist;
6. that the applicant is presumed innocent until his guilt is proven;
7. the applicants fundamental rights and freedom have been violated by the respondent with reckless abandon. These are the rights to;

(a) a fair hearing under article 50 (2) (a) (d) of the Constitution of Kenya, 2010.

(b) a bail/bond under article 49 (i) (h) of the Constitution

(c) fair administrative action under article 47 of the Constitution.

(d) to dignity under Article 27 of the Constitution, 2010.

The applicant in this case under review is charged with the offence of forcible entry contrary to section 90 as read with section 36 of the Penal code.

Under section 362 of the Criminal Procedure Code, the High court is granted powers of revision in the following manner;

“the High court may call for and exercise 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”

The applicants counsel, M/s Egesa argued the application but the same was not opposed by the counsel for the state M/s Mwaura. She only urged the court to direct that the applicant to report to Mtwapa police station, at least once every week among other conditions that it will impose against him.

Having read through the application, its grounds and the supporting affidavit of applicant Moses Charo Kombe, I have carefully listened to both counsels in their submissions in support of the said application.

Since the application for review has not been opposed by the prosecution, and while clothed with the powers of revision provided for under Section 362 of the Criminal Procedure Code, the application for revision is hereby allowed.

The accused person may be released on bond/bail as follows;

1. with one surety of ksh 100,000/=
2. in the alternative, cash bail of Ksh 50,000/=
3. the applicant/accused person to report to the OCS/investigating officer, Mtwapa police station every 21 days until the full determination of his trial.
4. the applicant/accused person to be of good conduct and maintain public order, peace and security
5. the applicant/accused person to attend court as and when required.

In default of any of the above conditions the bond granted herein will be cancelled.

Dated and delivered at Mombasa this 29th day of July 2016.

D. CHEPKWONY

JUDGE

In the presence of:

Mr Ade for the state

M/s Egesa for applicant

C/clerk- Mr Muya

Court – Ruling read and delivered in the presence of all the parties.

The parties to be supplied with typed and certified copy of ruling.

D. CHEPKWONY

JUDGE