



REUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL REVISION NO.351 OF 2016

REPUBLICAPPLICANT

VERSUS

DORSILLA AKINYI OMONDI & 10 OTHERSRESPONDENTS

RULING

A revision is sought vide a letter by the Director of Public Prosecution dated 9th August, 2016 addressed to the High Court of the orders that were granted to the Respondents regarding bail in Chief Magistrate's Criminal case No 1577 of 2016, Republic versus Dorsilla Akinyi & 10 others .

The reasons given for the application are that;

1. The bond/bail terms that were imposed by the court are manifestly lenient and contrary to the guidelines set out for the Bail and Bond by the judiciary.
2. The bail terms imposed by the court expose the justice system to utter contempt in the eyes of the public and in a manner the undermines public confidence in the fight against economic crimes.

In the Chief Magistrate's Criminal case No 1577 of 2016, Republic Vrs Dorsilla Akinyi and others, the accused persons (Respondents) are charged with:

2. Conspiracy to contravene provisions of EACCMA contrary to section 193 as read with section 203 of the EACCMA.

“The facts being that on the diverse dates between 10th days of May 2016 and 14th day of May, 2016 at Kilindini port in Kilindini sub county Mombasa County, the accused all being officers of Kenya Revenue Authority and Kenya Ports Authority jointly and knowingly contravene to contrive provisions of EACCMA Act by fraudulently making the documents with the intent to evade custom duty to wit they fraudulently cleared 12x40 feet containers loaded with fabrics disguised as ladies plastic shoes without paying duty and other charges amounting to Kenya shillings 10 million.”

In count II, the accused are charged with aiding and abetting contrary to section 208 of the EACMA.

The particulars being that;

“On the diverse days between 10th day of May 2016 and 14th day of May 2016 at Kilindini port in Kilinidni sub-county Mombasa county, the accused being officers of Kenya Revenue Authority

and Kenya Ports Authority having been tasked in the Port procedure, they jointly aiding and abetting ABDIHAFIDHA B FARAH in contravening section 33 of EACCMA thereby importing concealed goods.”

In count III, the accused are charged with using falsified documents contrary to section 203 o(h) of the East African Community Customs Management Act, 2004. The facts are that;

“On the diverse dates between 10th May, 2016 and 14th day of May 2016 at Kilindini sub-county Mombasa county, the accused jointly knowingly used falsified customs declaration documents required for purposes of assessment liable duty”.

The powers of revision are donated to the high court by section 362 of the criminal procedure code which provides.

“The high Court may call for and examine 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 findings, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

The application was opposed Mr Magolo, Mr Were and Mr Makaya counsel for the accused persons.

Having listened to the arguments by all counsel, I have also read through the authorities cited in considering this application for revision and perused the proceedings of the lower court.

It is instructive to note that the right to bail for an arrested or accused person is guaranteed under Article 49(i) (h) of the constitution, which states.

“An arrested person has the right to be released on bond or bail on reasonable condition, pending a charge or trial unless there are compelling reasons not to be released.”

The reasonable conditions which a court can be guided by are not provided for by any law. This is left to the discretion of the court with regard to the facts and circumstances of each case.

As held by Justice Odero in Republic Vs Baktash Akasha and others, Mombasa Criminal Revision No 54 of 2014.

“The grant of bail is a discretionary of power granted to a court. The presiding judicial officer is required to consider the bail application, weigh it against constitutional and legal provisions and make a decision one way or another”

The Honourable Judge went on to state;

“The High court would only be required to intervene by way of review where there is evidence of an injudicious exercise of the discretion to grant bail by the trial court”

In this case, the state has not shown in which way the trial magistrate in granting the accused persons bond, had acted incorrectly, illegally or in- appropriately. I believe that in arriving at the decision to grant the accused bond, the trial magistrate had considered and analysed all the facts and relevant law that was presented before him as provided for under the Criminal Procedure Code.

“The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive”

In fact, as pointed out by the defence counsel, and noted by the court, the accused/Respondent have been attending court even for the proceedings herein, meaning, they are in compliance with the primary goal of bond or bail, being a guarantee that an accused person attends his or her trial until its final

determination.

The reason that was raised by the Director of Public Prosecution in applying for a review by the orders granting the accused persons bail is a matter for appeal and not review.

I am satisfied that there is not good reason to interfere with and revise the Honourable magistrate's findings/order.

I proceed to dismiss the application for revision accordingly.

D. O. CHEPKOWONY

JUDGE

Ruling delivered, dated and signed this 17th day of November 2016.

In the presence of:

Mr Ayodo for the state –present

Mr Magolo for the accused –present

C/clerk- Kiarie