



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

MISC. CRIMINAL APPLICATION NO. 18 OF 2015

ABDALLA SWALEH SHAB alias DULAAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

This Notice of Motion application dated the 18th day of February, 2015 and which is expressed to be brought under article 2, 47, 48, 49, 50, 51, 165 (3) (a) (5) (6) (7) of the Constitution of Kenya and section 123(3) of the Criminal Procedure Code.

Seeks the following orders;

1. **That the Court do set aside the orders of Honourable Gicheru – Chief Magistrate delivered on 16th and 17th day of February, 2015.**
2. **That the Court do order the reinstatement of the bond terms earlier on issued on 17th October, 2014.**

The grounds are that the Applicant was charged with a attempted murder contrary to section 220(a) of the Penal Code and was arraigned before Honourable Gicheru – Chief Magistrate.

On 17th October, 2014 bond was granted to the Accused. On 16th February, 2015 the bond was canceled.

In his supporting affidavit the applicant depones that the bond was canceled owing to a personal Vendetta against him by the authorities. That at the time of cancellation of the bond no Warrant of arrest had been issued against him.

Further that he had been attending Court when required and had not absconded.

In his ruling dated the 16th day of February, 2015 the learned trial magistrate observed that there was a letter dated 3rd February, 2015 by the Assistant Director of immigration Services Coast Region confirming that the Accused Abdalla Swaleh Shaib traveled out of the country through Moi International Airport on 6th November, 2014 and returned on 4th January, 2015.

He also observed that there was another letter dated 4th January, 2015 stating that an outpatient treatment card dated 25th November, 2014 in the name of the Accused was not genuine. He admitted the two documents under section 82(d) (e) of the Evidence Act which provides,

“Without prejudice to any other mode of proof prima facie evidence of the following public documents may be given in the manner hereinafter shown, that is to say (1) by records of the service ministry or department certified by the head off the service or department or in a case of a Ministry, by the permanent secretary thereof”.

He further observed that if the Accused left the country on 6th November, 2014 and returned on 4th January, 2015 then there was no way that he could have been at Coast General Hospital on 25th November, 2014.

I have perused passport No. A1989668 issued to one Abdalla Swaleh Shaib and it does show that he departed Mombasa Moi International Airport on 6th November, 2014 vide flight 212 Rwanda Air and arrived on 4th January, 2015 vide flight No. 214 Rwanda Air at Mombasa Moi International Airport.

The Assistant Director of Immigration Services vide a letter dated 3rd February, 2015 has confirmed this travel.

The Chief Administrator Coast Province General Hospital vide a letter dated 4th January, 2015 did confirm that out patient card No. 147978 bearing the name of Abdalla Swaleh was issued on 25th November, 2014 as altered on the treatment card. The signature could not be authenticated.

I do concur with the observations made by the learned trial magistrate that the Accused did travel to Dubai without informing the Court. He also presented before the Court fake documents to the effect that he was sick on 25th November, 2014 whereas he was out of the country.

Its instructive to note that his two sureties Hamisi hafidh Rashid and Rukia Sudi Bashir did make an application before the Court to withdraw and to be discharged from standing surety for the Accused on the grounds that he traveled out of the country without informing them. This is important because a surety binds himself to produce the Accused in Court whenever he is required. Failure to inform his sureties of his decision to leave the jurisdiction of the Court is an abuse of concession of bail.

The Accused was duly bound to make an application before the Court in the event that he wished to leave its jurisdiction.

The Accused, I find produced fake medical reports before the Court. His hands are therefore tainted. This application has no merit and its rejected.

The Accused to stay in remand custody.

Ruling delivered dated and signed in open Court this **30th day of April, 2014.**

.....

M. MUYA

JUDGE

30TH APRIL, 2015

In the presence of:-

Counsel for the State Mr. Masila

Mr. Shimaka for the Accused absent

M. MUYA – JUDGE

Miss Maina holding brief Shimaka

M. MUYA – JUDGE

30/4/2015