



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

MISC. APPLICATION NO. 7 OF 2015

FRANCIS EDWARD STRANGEAPPLICANT

VERSUS

STATERESPONDENT

RULING

1. This application is dated **23rd February, 2015**. And is brought by one **Francis Edward Strange**, a citizen of New Zealand. He is the **2nd** accused person. The **1st** accused persons is **Stephen Samuel Piano** with whom the **2nd** accused was charged with in Criminal Case Number 48 of 2015 before the Principal Magistrate Court at Kilgoris. Both were charged with **breaking into a building and committing a felony**, Contrary to **Section 306 (a)** of the **Penal Code** and stole property estimated at **Ksh. 42,860,000/=**. They both denied the offence. Both applied for bond. Both were given bond, but on different terms.
2. The second accused`s bond terms were as follows:
 - a. *To provide two Kenyan sureties who must be public/civil servants/officials and a personal bond of Ksh. One million to be approved by the trial court.*
 - b. *To pay a cash bail of Ksh. 1,000,000/00.*
 - c. *To deposit his passport and other relevant travel documents in his possession with the court.*
 - d. *To furnish to the Court credible evidence of his place of residence within the Republic and to inform the court whenever he changes each residence.*
 - e. *To report to the Criminal Investigation Office, Kilgoris Police Station, once in every two weeks, until further orders of the trial court.*
3. The applicant has fulfilled the terms of the (c) to (e) above. He is unable, however, to fulfill the terms of (a) and (b) and further finds term (e) as very onerous and applies that it be varied also.
4. The essence of this application is to vary/reduce the terms of (a) and (b) respectively to affordable level that reduce cash bail from Ksh. 1,000,000 to affordable level and (b) the requirement to get Civil Servants as sureties be dropped and instead, substitute the sureties to be any Kenyan citizen, willing to give sureties.

In respect of (e) instead of reporting to Kilgoris Police Station, the applicant who now resides in

Nairobi be allowed to report to Criminal Investigation Department Headquarters, a place proximate to where he resides.

5. The overriding factor in requiring a cash bail of **Ksh. 1,000,000.00** in respect of the second accused is because the accused is not a citizen of this country and could very easily subvert the cause of justice by absconding. He is considered a flight risk. It is also true that he has lodged or deposited his passport with the court. However, the fear that he would abscond still lingers in the mind of the court.
6. The prosecution has stated that they have no objection to the applicant using sureties of ordinary Kenyan citizens, at any rate, not being required to be civil servants. The requirement that he reports to Kilgoris every two weeks could be substituted for Criminal Investigation Department Headquarters Nairobi where the applicant resides.
7. The right to bail is a constitutional right. It is to be enjoyed by all citizens as well as foreigners. **Article 49(i) (h)** of the Constitution is but very clear on the rights of the accused and an arrested person.

Francis Edward Strange must be accorded the same rights, although he is not a citizen of this Country.

8. The prosecution through Mr. Otieno, fortunately submits that he has no objection to the applicant getting sureties who are not Civil Servants. He also has no objection to the applicant being allowed to report to **Criminal Investigation Department Headquarters**, instead of reporting to Kilgoris Police station as earlier decreed by the trial court.
9. Accordingly, this court in my considered view will vary the terms of bond/bail as here below:
 - a. *To provide two Kenyan sureties, not necessarily Civil Servants.*
 - b. *To pay cash bail of Ksh. 500,000, not one Million as earlier decreed by the trial court.*
 - c. *To report to Criminal Investigation Department Headquarters every two weeks instead of to Kilgoris police station as earlier decreed by the trial court.*

All other terms not varied as above to remain the same.

It is so ordered.

The order so given to apply Mutatis Mundandis to High Court Criminal. Miscellaneous No. 06 of 2015.

Dated, Signed and Delivered at Kisii this 16th Day of June, 2015

HON. C.B. NAGILLAH

JUDGE

In the presence of:

- Sagwa holding brief for Kihara for the applicant
- Otieno for the respondent
- Samuel Omuga - Court clerk

