



REPUBLIC OF KENYA

High Court of Kisii

Miscellaneous Criminal Application 149 of 2012

JOSEPH ONGUTI MOSE.....1ST APPLICANT

DENNIS CHANGE MIRWOBA.....2ND APPLICANT

PETER NYARANGI MOSE alias PETER MOGAKA NYARANGI.....3RD APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The application before me is a chamber summons dated 19th December 2012 brought under **section 123 (3) of the Criminal Procedure Code Cap 75 of the Laws of Kenya and Article 49 (1) of the Constitution of Kenya, 2010**. The applicants seek to be released on bail pending hearing and determination of the case against them being Kilgoris PMC Criminal Case Number 976 of 2012.
2. The application is supported by the grounds set out on the face thereof and in the main it is contended that the trial magistrate is on leave and that in the meantime, the magistrate on duty has declined to entertain the application for bond. The applicants also contend that they are entitled to bond as provided by the Constitution of Kenya, 201
3. There was no response to the application though the respondent was duly served. At the hearing of the application on 20th December 2012, Mr. Nyasimi who appeared for the applicants informed the court that there was a similar application pending before the trial court but that he had filed the instant application on behalf of his clients because the trial magistrate was on leave.
4. In his response, counsel for the respondent submitted that this court has power to grant the orders sought and that it is the applicants' constitutional right to be admitted to bail on such terms as the court may impose.
5. I have carefully considered the application and the submissions made by both parties. I have also considered the law. Though there do not appear to be any compelling reasons why the applicants should not be admitted to bail, I note that courts do not make orders in vain. Since there is a similar application pending before the trial court, and it being unknown to this court whether such application has been granted or not, I decline to grant the orders sought herein. The instant application is therefore struck out. Applicants are however at liberty to file a fresh application should the application pending before the trial court be dismissed.
6. It is so ordered.

Dated and delivered at Kisii this 24th day of January, 2013.

RUTH NEKOYE SITATI

JUDGE.

In the presence of:

Mr. Nyasimi (present) for Applicants

Mr. Shabola (present) for Respondents

Mr. Bibu - Court Clerk

RUTH NEKOYE SITATI

JUDGE.