



REPUBLIC OF KENYA

High Court at Meru

Criminal Miscellaneous Application 12 of 2013

JOSPHAT MURITHI MWORIA..... 1ST APPLICANT
FERNARD MWENDE MURMIA.....2ND APPLICANT
ALEX GIKUNDI MURUMIA.....3RD APPLICANT
JOSES KIMATHI MURUMIA.....4TH APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application is a Notice of Motion brought under Articles 40(1)(h), 50(2)(A), 159(1), (2) and 258(1) of the Constitution of Kenya and under S. 124, 125, 126, 362 and 364 of the Criminal Procedure Code. It is seeking the following orders:

1. That the honourable court be pleased to certify this application as extremely urgent and hear it ex-parte in the first instance.
2. That the honourable court be pleased to restrain the Chief Magistrate Maua Law Courts Mr. J. K. Kingori from cancelling the 1st applicants bond in Maua CMCR.C. NO. 3558 of 2012 pending the hearing of this application.
3. That the honourable court be pleased to review the Maua Chief Magistrate's order on bond terms for the applicants made on 5/12/2012 and reduce the same to affordable level.
4. That the honourable court be pleased to issue any further and/or better orders as may meet the ends of justice herein.

The application is supported by the following grounds:-

i. The Maua Chief Magistrate has given very stiff and unaffordable bond terms to the applicants.

ii. The maua Chief Magistrate in Maua Cr. C. No. 3558 of 2012 has indicated he will on 1/3/2012 withdraw the 1st applicants bond.

iii. The applicants herein are not a flight risk.

I noted when I retired to prepare a ruling on the applications by the four Applicants that a similar application was made before the learned trial magistrate or Chief Magistrate. It is indicated that a date was given for the ruling on the application for 1st March 2013. Instead of waiting for the outcome the accused persons have run to this court asking for restraining order against the learned Chief Magistrate of Maua Law Courts. I decline to rule on the application that was argued before me on 6th March, 2012 for two reasons.

One, it is an abuse of court process to make duplicity of applications before different counts without waiting for decision from each application made in progression as the law prescribes. The Applicants should have waited for a ruling from the Chief Magistrates Court on their Application before coming to this court. Having failed to wait for the outcome of their application before the Chief Magistrates court the Applicants have not followed due process.

Two, no court has power to restrain another court from exercising their Judicial power or performing their judicial duty. The prayer framed in Order 2 of the application is incompetent as framed.

The Applicants should go back to the Chief Magistrate's Court Maua for a ruling on their matter after which they may appeal against the ruling to this court if need be.

Those are my orders.

DATED SIGNED AND DELIVERED THIS 8TH DAY OF MARCH, 2013

LESIIT, J

JUDGE.