



REPUBLIC OF KENYA

High Court at Mombasa

Miscellaneous Criminal Application 39 of 2013

REPUBLIC APPLICANT

- Versus -

CHRISTOPHER CLEMENT WEISSENREIDER RESPONDENT

RULING

There are two applications filed in respect of the Respondent in this case.

The first one in time is vide a letter addressed to this Court by Counsel for the Respondent dated 15th May 2013 which seeks revision orders on the premise that different bond terms were imposed on the Respondent and his co-Accused persons with the Accused being admitted to a bond of Kshs. 1 million whereas his co-Accused were granted a bond of Kshs. 100,000/-.

The second application is brought by the State in which the Court is urged to cancel the Respondents bond. This application is premised on Section 362 and 364 of the Criminal Procedure Code and Article 157(11) of the Constitution of Kenya 2010.

Orders are sought of revision of the trial Magistrates orders on bond in Criminal Case No. 1151 of 2013. The grounds are that the order of the Court for the Respondent to deposit his Passport with the investigating officer serves no purpose given that the Respondents Visa will expire on the 19th June 2013.

Further that the Accused legal status in the country will likely be unlawful after 19th June 2013 because the same may either not have been renewed or that his presence shall be that of a prohibited Immigrant under the provisions of Section 33(1) of the Kenya Citizenship and Immigration Act No. 12 of 2011 and that under Section 40(3) of the aforesaid Act, the Director of Immigration shall not issue a permit to a prohibited Immigrant.

Section 33(1) of the Kenya citizenship and Immigration Act No. 12 provides-

“A prohibited Immigrant is a person who is not a citizen of Kenya and who is-

(a) Not having received a pardon.

(1) has since been convicted in Kenya or any country of an offence created under a statute for which a sentence of imprisonment is for a minimum term of three years.

(b) a person engaged in human trafficking

human smuggling, sexual exploitation and sex crimes.”

This application is further grounded on the provisions of Section 40(3) of the citizenship and Immigration Act No. 12 which reads-

“The Director shall issue a permit of the required class to a person who is not a prohibited Immigrant or inadmissible person who has-

(a) made an application in the prescribed manner and

(b) satisfied the committee that he has met the requirements relating to the particular class or permit.”

In the present case, the Respondents/Accused Visa has not expired. No authority be either the court or the Immigration has declared him a prohibited Immigrant or inadmissible person. The process of such a declaration if started has not been finalized.

There is no certainty that the Director or the committee established under Section 7 of the Kenya citizens foreign National Management Service Act will refuse to issue a permit.

The application by the State is based on what may or may not take place in the future. The State is not estopped from declaring the Respondents a prohibited Immigrant at the appropriate time and moment and bringing to Court any charges it may deem necessary.

In my view, the fact that the Respondent may or may not in the future be declared a prohibited immigrant is not a compelling reason to deny him bond as envisaged under Article 49(i)(h) of the Constitution.

The second application is based on the issue of discrimination which is contrary to the provisions of Article 27 of the Constitution.

I have perused the proceedings in Criminal Case No. 1151 of 2013 and in particular the charge sheet and find that in the first Count the Respondent is charged alone with a Count of exploitation of prostitution contrary to Section 17 of the Sexual Offences Act and in the second Count with the offence of living on earnings of prostitution contrary to Section 153(1)(a) of the Penal Code.

His co-accused are charged with one Count of living on earnings of prostitution contrary to Section 154 of the Penal Code. The Accused/Respondent faces a more serious charge hence he cannot argue that he had been discriminated when admitted to a bond with different conditions and terms.

In conclusion I do not find good reason to deny the Respondent bond. In the same vain I find no reason to revise downwards his bond. I will only add one condition that the bond terms of Kshs. 1 million remain but with two Kenyan sureties of Kshs. 500,000/- each. The Passport to be deposited with police as earlier ordered by the lower Court.

To that extent only are the bond terms reviewed/revised.

Ruling read and delivered in open Court this 21st day of May, 2013.

**M. MUYA
JUDGE**

In the presence of:-

Mr. Okemo for the State

Mr. Lumatete – Counsel for the Respondent

Court clerk – Mr. Musundi