



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CR. MISC. APPLICATION NO. 59 OF 2013

GINO DICAPRIO APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

This Notice of Motion application dated 9th July, 2013 seeks an order for the release of the Applicants passport No. 720101007 currently deposited in Court vide Criminal Case No. 1231 of 2013.

The salient grounds are that the applicant has no other document of identification except his passport and further that he is experiencing financial difficulties as he cannot access any of his accounts without presentation of his passport.

The application is opposed on the grounds that the passport indicates that he had come to Kenya on Holiday. His place of abode is not shown.

It is common ground that the Applicant is a holder of a British passport.

He has been charged in Court with obtaining by false charges in three Counts and was subsequently released on a bond of Ksh. 2,000,000/= with one Kenyan surety. It was further ordered that he do deposit his passport which he did.

He now prays for the release of the same passport for identification purposes and to do commercial transactions.

I have perused the applicants affidavit in which he depones that he is married to a Kenyan lady by the name of Sarah Macreen Atieno. A marriage certificate marked '**GD 2**' is attached.

He has also annexed a copy of his expired passport showing that he has been traveling in and out of the Country and he has no intention to abscond.

There is no evidence to indicate that the marriage certificate is a fake one.

No evidence to show or suspect that he intends to abscond.

The order to deposit the passport is reviewed and varied to the extent that the passport so deposited be released to him on the condition that he furnishes a second Kenyan surety of Ksh. 2 Million.

Ruling dated and delivered in open Court his **18th** day of **July, 2013**.

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M. MUYA

JUDGE

18TH JULY, 2013

In the presence of:-

Learned State Counsel Tanui

Learned Counsel Mr. Mushelle

Court clerk Musundi