



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS APPLICATION NO. 164 OF 2013

ABDULAHI MOHAMED ABBAS APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

By Way of a Notice of motion application dated 16th December, 2013 and expressed to be brought under article 49 of the Constitution of Kenya, section 123 (3) of the Criminal Procedure Code, the applicant seeks to be admitted to bail on reasonable terms similar to the ones that were initially granted to him by the Court at the time of taking plea.

The grounds are that the applicant was charged before the Mombasa Chief Magistrate in Criminal Case No. 2940 of 2012 on 10th October, 2012 and was admitted to bond on reasonable terms and had been faithfully attending Court till the 18th of June, 2013 when a fresh Count was added to the effect that he was in Kenya illegally.

The Court then proceeded to impose fresh terms by ordering the applicant to provide a surety of the sum of Ksh. 1 million and to deposit his passport.

It is submitted that the bond terms are onerous and unrealistic as the applicant does not own a passport.

Since then he has been in custody and has contracted some sickness while in remand at Shimo La Tewa G.K. prison.

I have perused the lower Court file and it is noted that the applicant has been charged with two Counts the first one is that of obtaining goods by false pretences contrary to section 313 of the Penal Code and the second one is that of being unlawfully present in Kenya.

At the time of plea he had been admitted to a bond of Ksh. 400,000/= with one surety of similar amount which bond was later reviewed to Ksh. 100,000/= with one surety on 1st November, 2012.

This bond was further reviewed after charge of being unlawfully present in Kenya was added.

The terms were a bond of Ksh. 1 million with one Kenyan surety of similar amount and in addition to

deposit his passport in Court. This review was on 24th June, 2013 and since then he has been in custody. I have perused the record of proceedings and it is noted that whilst out on bond at no time did the applicant abscond.

The charge sheet shows that he obtained US dollars 2500 equivalent to Ksh. 210,500/= and Ksh. 468,000/= totaling to Kshs. 678,500/=. The bond of Ksh. 1 million is on the higher side and is not commensurate with the charge. It is noted also that the charge reads “**obtaining goods by false pretences**” whereas the particulars indicate that what was obtained was money, (but that is neither here nor there as what is before this Court is the issue of bond).

I find there is need to vary the bond terms. The applicant is admitted to a bond of Ksh. 400,000/= with one Kenyan surety of similar amount. It is alleged that he has no passport. That could be true as not every Kenyan has a passport. If he is a Somali from Somalia he may also not be in a position to be in possession of a passport owing to the situation that has been obtaining in that country. It would be futile therefore to order him to deposit a passport. The order for depositing a passport is therefore varied to the effect that there will be no passport to be deposited.

Ruling delivered and dated this **19th** day of **December, 2013**.

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M. MUYA

JUDGE

19TH DECEMBER, 2013

In the presence of:-

Learned Counsel for the applicant Miss Margaret holding brief Gikandi

Learned State Counsel Mr. Ayodo

Court clerk Chepkwony.