



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**Miscellaneous Criminal Application 422 of 2012**

ALVIN KAMANDE NJENGA .....APPLICANT

VERSUS

REPUBLIC .....RESPONDENT

**RULING**

**1. Section 123(3) Criminal Procedure Code**, vests in the High court the jurisdiction to interfere with the decision of the trial court on matters of bail, emanating from a trial court. That intervention by the High Court however, ought to be exercised with great circumspection, and in reliance of principles which have been developed by the courts. It is not to be exercised capriciously.

2. The applicant herein first came to court by application dated 14<sup>th</sup> August 2012 under certificate of urgency. In that application he sought two prayers. The first was for the lifting of warrant of arrest issued for his arrest and/or apprehension in **Limuru Cr. Case 1132 of 2010**, and the second was for stay of proceedings in the stated case.

3. On 15<sup>th</sup> August 2012 the High Court certified the matter urgent under vacation rules and lifted the warrant of arrest limited to 30 days from the date of the order, to enable him to present himself before the court in Limuru and explain himself.

4. Learned counsel Mr. Aketch, submitted before this court on 27<sup>th</sup> September 2012, that the applicant did present himself before Limuru court, and following his explanation the warrant of arrest against him was lifted.

5. What was for hearing on 27<sup>th</sup> September 2012 therefore, was the prayer for the stay of proceedings in **Limuru Cr. Case No. 1132 of 2010**. Instead Mr. Aketch learned counsel, asked this court to, extricate his client from remand cells where he has, once again, been ordered detained following subsequent actions of the applicant. The applicant is due to appear in court on 1<sup>st</sup> October 2012 for further defence hearing, and the learned counsel therefore asked this court to stay those proceedings in order not to render the applicant's application in **HC. Misc. App. No. 282 of 2011** nugatory.

6. I do agree with the learned state counsel, M/s. Wang'ele, that the applicant has a constitutional right to bail, but that there is insufficient material before the court for the learned state counsel, and indeed, for this court itself to determine whether or not the trial court curtailed the applicant's right to bail, because there existed compelling reasons to do so as envisaged under **Article 49(1)(h) of the Constitution**.

7. I therefore decline to grant the prayer on reinstatement of bail, since it is not possible for me to satisfy myself as to the propriety, legality or correctness of the order of the trial court that denied the applicant bail, on the submissions so far made by learned counsel Mr. Aketch.

8. On the prayer for stay of proceedings in **Limuru Cr. Case No. 1132 of 2010** pending the hearing and determination of the application herein, it is my view that the application is spent. When this court lifted the warrant of arrest for 30 days and allowed the applicant to present himself before the court in Limuru, his successfully urged for that court to vacate its orders which issued the warrant of arrest against

him. This application had therefore served its purpose.

**9.** On the stay of proceedings in **HC Misc. 171 of 2011** and **282 of 2011**, it is an abuse of the court process for a party to file a multiplicity of applications touching on the same parties and the same subject matter. Since these are different files, they shall be dealt with in due course on the dates set down for them. That in my view would be the orderly fashion of dealing with these applications and preserving the dignity of the court, which learned counsel Mr. Aketch alluded to in his submissions.

That is therefore the order of the court.

**SIGNED DATED** and **DELIVERED** in open court this **28<sup>th</sup>** day of **September 2012**.

**L. A. ACHODE**

**JUDGE**