



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Criminal Application 432 of 2012

SAMUEL NG'ANG'A NG'ETHE .....1<sup>ST</sup> APPLICANT

PETER NG'ANG'A WANJUHI .....2<sup>ND</sup> APPLICANT

OLIVER KARONGO WANJUHI .....3<sup>RD</sup> APPLICANT

VERSUS

REPUBLIC .....RESPONDENT

RULING

The three applicants are facing a charge of robbery with violence contrary to Section 295 as read with Section 296 (2) of the Penal Code. There is case is part heard before the Principal Magistrate at Kiambu. This is an application to vary and or set aside the ruling of the Principal Magistrate delivered on 14<sup>th</sup> June, 2012 and order that the applicants be released on bond.

The applicants first appeared in court on 19<sup>th</sup> December, 2011 in which they denied the offence (allegedly) of assault causing actual bodily harm and were each released on bond of Kshs. 50,000/= and in the alternative cash bail of Kshs. 25,000/=. Subsequently, the charge was substituted with that of robbery with violence and the learned trial magistrate is recorded to have said as follows,

**“Owing to substitution of the charges the accused persons shall now be remanded in custody pending the hearing and final determination of the case or further orders. Cash bail to be refunded to depositors”.**

On a subsequent date, their learned counsel asked for the applicants to be released on reasonable bond terms which was opposed by the prosecutor on the basis that the offence was serious and that there was fear they may abscond. The learned trial magistrate subsequently delivered a ruling on 14<sup>th</sup> June, 2012 where he said as follows,

**“I have considered the application by the defence counsel for the release of the accused persons on bond and the reply by the prosecution. I am in agreement with the prosecution that it was incumbent upon the defence counsel to convince the court that the accused persons will abide by**

**the bond terms despite the gravity of the offences they are facing. The defence counsel only asked the court to release them on bond without saying more. There can be no guarantee that they will turn up for trial. I therefore decline to release them on bond.”**

With profound respect, there was no evidence whatsoever that the applicants herein were not intent to abide by any terms set by the court. There is also no evidence that if granted bond they will not turn up for the trial. The innocence of the applicants must be presumed until proven guilty.

The right reserved under Article 49 (1) (h) is only to be denied if there are compelling reasons to that effect. With respect, I have not been shown any compelling reasons to deny the applicants the said rights. Accordingly, this application succeeds. Each applicant shall be released on bond of Kshs. 200,000/= with one surety of equal sum or payment of Kshs. 50,000/= cash bail. The sureties must be approved by the Deputy Registrar.

Orders accordingly

*Dated, signed and delivered at Nairobi this 27<sup>th</sup> day of September, 2012.*

**A. MBOGHOLI MSAGHA**

**JUDGE**