



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Criminal Revision 556 of 2012**

**MOHAMED RASHID MRAJA .....APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

The appellant was arraigned in court on two counts of Incitement to violence contrary to section 96(2) of the penal code on 8th October, 2012.

He pleaded not guilty on both counts. Subsequently his Advocate Mr. Lumatete made an application for bond which was opposed by the state. The trial magistrate after hearing both sides granted the Accused a bond of Ksh. 2 million with one surety of similar amount with a rider that the security be movable property.

On 22nd October, 2012 the lower court was moved by the Accused who requested a reduction of bond terms. Same was reduced to Ksh. 1.5 million with one surety of similar amount with the insistence that the surety be movable property.

On 30th October, 2012 the bond terms were further reduced to Ksh. 1 million with one surety of similar amount.

On 6th November, 2012 another application was made to reduce further the bond terms and the court was referred to another similar case No. 245 of 2012 where the court granted a cash bail of Ksh. 100,000/=.

The court rejected that application but allowed cash bail of Ksh. 1 million. It is that order that has aggrieved the defence which now urges this court to review those orders.

Section 123 (2) provides,

**“The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive”.**

The charge of Incitement to violence contrary to section 96(2) of the penal code carries an imprisonment term of not more than five years.

By imposing stringent bond terms, the trial magistrate must have borne in mind the circumstances surrounding this case and other cases which have attracted a lot of public interest owing to the nature of

the utterances the Accused person and others have been alleged to have made.

What he failed to consider is the Accused's ability to satisfy these stringent terms. The cardinal principle in granting bond to ensure that the Accused avails himself in court whenever so required.

Mr. Onserio representing the state has urged this court not to disturb the order as it does not have the jurisdiction to do so. He is of the persuasion that terms of bond are discretionary to the officer granting them and that there was no error to attract the courts intervention. He further contends that there are many title deeds in Kwale County hence the magistrate's insistence on a surety with movable property.

The High Court is entrusted with wide powers to oversee and supervise the lower courts.

On the issue of bond section 123(3) of the Criminal Procedure Code provides,

**“The High Court may in any case direct that an Accused person be admitted to bail or that bail required by a Subordinate court or police officer be reduced”.**

Further section 362 also of the Criminal Procedure Code provides,

**“The High Court may call for and examine the record of any criminal proceedings before any Subordinate court for the purpose of satisfying itself as to the correctness legality or propriety of nay finding sentence or orders recorded or passed and as to the regularity of any proceedings of any such subordinate court”.**

After due examination of the orders dated 6th November, 2012. I do find that the trial magistrate did grant cash bail of Ksh. 1 million for the charge of Incitement. But bearing in mind the status of the Accused person's and their station in life a bond of Ksh. 1.5 million with one surety (movable property) or cash bail of Ksh. 1 million is way above their means and it may ultimately mean a denial of bond itself which is a Constitutional right.

I accordingly , revise the order dated 6th November, 2012 in terms that the Accused may be released on a bond of Ksh. 300,000/= with one Surety (Movable or Immovable) of similar amount of cash bail of Ksh. 100,000/= (one hundred).

The ruling and orders obtaining in this case Criminal Revision No. 556 of 2012 to apply in tandem with Criminal Revision No. 555 of 2012 whose application is similar to this one.

Ruling dated and delivered in open court this 14th day of November, 2012.

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**M. MUYA**  
**JUDGE**

**In the presence of:-**

Magolo for appellants

Mr. Gioche for the state

**M. MUYA**  
**JUDGE**

Files to be returned to the Subordinate court.

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**M. MUYA**  
**JUDGE**

