



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Revision 558 of 2012

- 1. BILAL GAITHO**
- 2. SWALEH ABDULMAJID**
- 3. SWALEH ALI**
- 4. KHUBEID ABOUD ROGO**

**5. JUMA MUSAAPPLICANTS
VERSUS**

REPUBLICRESPONDENT

(From Original Criminal Case No. 3323 of 2012 of the Chief Magistrate's Court at Mombasa: E. MICHEKA – SRM).

RULING

The applicants were charged in Mombasa Chief Magistrate's Court Criminal Case No. 3323 of 2012 with the offence of preparation to commit a felony contrary to section 308(1) of the Penal Code.

The particulars being that,

“On the 13th day of November, 2012 at around 6:00 a.m. at Mtwapa area within Kilifi County, you were found with intent to plan a grenade attack at Makupa and Central police station respectively in circumstances that indicate that you were intending to commit a felony namely murder”.

The prosecution objected to the release of the Accused persons on bond but the trial magistrate in a well reasoned ruling granted them bond with attendant conditions.

It is those conditions on bond terms that the applicants now seek this Courts intervention in the form of review.

I do concur with Counsel for the defence Mr. Mureithi that under article 165(3) (d) (11) (6) and (7) of the Constitution section 123(3), 362 – 367 of the Criminal Procedure Code the High Court has powers to call for and review orders of all courts and tribunals under it.

Mr. Tanui for the State is also in agreement.

Mr. Mureithi has referred this Court to my ruling – **Criminal Revision No. 556 of 2012 MOHAMED RASHID MRAJA VS REPUBLIC** and **Misc. Criminal Application No. 505 and 507 of 2007 High Court Nairobi MICHAEL NGA'NG'A KANYI VS REPUBLIC.**

I would like to distinguish the two cases with the present one. In the case of **Michael Ng'ang'a**

Kanyi, the applicant had already sought a variation of bond terms in the lower Court unsuccessfully and hence the recourse to High Court.

In this case of **Mohamed Rashid Mraja** Bond terms had been varied three times and a deadlock had been arrived at.

In the present case there has been no application before the trial magistrate for variation of the terms of the bond. The applicants have not exhausted their rights of redress before the trial Court.

The High Court would be swamped with numerous applications for reviews if there was no insistence that applications be heard first and exhausted before the lower Court.

I, decline to review the order on bond at this stage and do direct that the application be made first before the trial magistrate as soon as possible.

This application is similar to that obtaining in file Revision 559 of 2012. The orders herein, to apply **mutatis mutandis** to 559 of 2012.

Ruling read and dated this **6th** day of **December, 2012**.

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M. MUYA
JUDGE

In the presence of:-

Mr. Tanui for State
Mauyonya holding brief Mr. Mureithi

M. MUYA
JUDGE