



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**MISC. CRIMINAL APPLICATION NO. 29 OF 2011**

**MUTUNGA MUNYOLI**

**DANIEL KISKO KITILI .....APPLICANTS**

**VERSUS**

**REPUBLIC .....RESPONDENTS**

**RULING**

I have considered the application for bail terms review dated 1.02.2011.

The two accused herein were arrested on 24.01.2011 after their truck was found fitted with Pirelli tyres which were allegedly part of a consignment stolen from a lorry on 5.12.2010 at Jomvu Changamwe in Coast Province.

The accused were arraigned before the Chief Magistrate's Court in Nairobi and charged with the offence of stealing and handling suspected stolen goods and released on a cash bail of Kshs.200,000/- which cash bail they posted.

Prosecution opted for transfer of the matter to the Chief Magistrate's court at Mombasa to be consolidated with another case which had been pending involving one accused person.

In the Nairobi court, it became clear that the charging in Nairobi of the 2 accused was to beat the 24 hour deadline set out in the New Constitution, Article 49(f) as stated by the prosecutor.

Unknown to Hon. Mutembei, the court in Mombasa had set the bail for the other accused person at Kshs.2m with sureties or 1m cash bail.

Hon. Ms Mutende demanded quite rightly the court proceedings and the order in the Nairobi Court. She also asked for the original receipts for the cash bail.

As a result she declined to extend the purported cash bail to the consolidated case.

She released accused on bond of Kshs.2million with one surety for similar amounts or a cash bail of Kshs.1 million.

In view of the above, I am satisfied that the Hon. Trial court acted properly and exercised its

discretion. It was not bound by the cash bail of Shs.200,000/- which has now been proven to have been duly paid. I have seen the certified copies of the receipt and the proceedings.

In the charge sheet of the consolidated case, the total values of stolen goods is Kshs. 13 million.

In fact upon perusal of the proceedings, the two accused were the two other accused in the Mombasa case.

Having now been brought to Mombasa, the court had a right to set the fresh bail terms. The court was not bound by the bail set in Nairobi.

Upon consulting the trial court, I am told that the 1<sup>st</sup> Accused has not raised bail and he is free to apply for review if he applies.

Considering the submissions by Mr. Mutua and agreeing that this court has discretion, I do hereby review the bail terms and vary the same.

The Accused shall and are hereby released on bail in the sum of Kshs.1,000,000/- with one surety for each of them or in the alternative each on Kshs.500,000/- cash bail.

Considering where they reside and considering that it is the court ought to facilitate the enjoyment of the bail as a Constitutional right, I do hereby order that the Accused be released forthwith on the basis of the existing cash bail of Shs.200,000/- each.

Each Accused shall within 14 days deposit the respective balance of Shs.300,00,000/- cash bail into court without fail or producing sureties for the bond of Shs.1,000,000/-. In default, this release order which is conditional shall stand revoked and the accused shall be re-arrested and placed in remand prison pending the hearing of their case.

The Accused to appear before the Hon. Magistrate on 22.02.2011 without fail.

**Dated and delivered at Mombasa on 8<sup>th</sup> February 2011.**

**M. K. IBRAHIM  
J U D G E**