



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

MISCELLANEOUS APPLICATION NO.38 OF 2011

RAMADHAN SHIHACHI.....1ST APPLICANT
ROBERT NJOROGE MBURUH.....2ND APPLICANT
GODWIN TELEWA WAFULA.....3RD APPLICANT
JIMMY OCHOKI MOSETI.....4TH APPLICANT

~VRS~

REPUBLIC.....RESPONDENT

RULING

Ramadhan Shihachi (1st Applicant/1st accused), Jimmy Ochoki Moseti (4th Applicant/2nd accused), Joseph Waweru Mungai (3rd accused), Godwin Telewa Wafula (3rd Applicant/4th accused), Robert Njoroge Mburuh (2nd Applicant/5th accused) and James Waithaka Mwaniki (6th accused) were jointly charged with robbery with violence contrary to section 296 (2) of the Penal Code whose particulars were that, on 7/2/2011 at about 5.00 p.m at Akichelesit area in Teso District in Western Province jointly with others not before the court and while armed with a dangerous weapon named a hammer robbed Joseph Mathinjo Kinyanjui of Ksh.666,030/=. They denied the charge and were each ordered to be released on bond of Ksh.1000,000/= plus one similar surety.

It would appear that each accused provided a surety and was released. The 3rd and 6th accused have subsequently jumped bail. On suspicion that the sureties that had been provided were fake, the Chief Magistrate, Bungoma cancelled the bonds of the rest of accused. The suspicion was raised by the prosecutor. The court asked that each accused deposits a cash bail of Ksh.500,000/= and provides one surety in similar amount if he wanted to be out on bond. It is not in dispute that none of these accused had failed to attend court.

The approval of any surety is a judicial function. The prosecutor has a role to play in the determination of whether the surety is sufficient. The overall objective of the court is to ensure that the accused will turn up to take his trial. It follows that if any question is raised about the credibility or insufficiency of a surety, the court is called upon to act. Under section 127 of the Criminal Procedure Code, if it is

discovered that, through mistake, fraud or otherwise, the surety is insufficient the court will summon and order the accused to provide a sufficient surety or he be committed to remand.

In the instant case, it would appear that the court was persuaded that the sureties provided by the accused were suspect. It was persuaded that the continued attendance of the accused would not be guaranteed. It cancelled the bonds. However, now that the accused had always attended court as required, all that the court should have done was to call for more secure sureties without having to change the bond terms.

The demand for Ksh.500,000/= cash bail foreach accused was in the circumstances quite onerous. I appreciate that the offence charged was a serious one, but under section 123 (2) of the Criminal Procedure Code the court should ensure that the bond terms are reasonable and not excessive. This means that some inquiry needs to be done about the means of the accused before fixing the amount of bond. The court should always bear in mind that bond is the constitutional right of an accused person. That right should not be denied or interfered with without sufficient basis.

Under section 364, I review the bond terms and re-instate the earlier terms of Ksh.1000,000/= bond plus one similar surety. The accused will either provide the same sureties with fresh securities or provide fresh sureties.

Dated and delivered at Bungoma this 18th day of October, 2011 in the presence of the Applicants, the State Counsel Mrs Leting and Lilian Gimose the court clerk.

A. O. MUCHELULE
JUDGE