

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Miscellaneous Application 5 of 2010

SIMON KEEGA MURIITHI.....1ST APPLICANT

JOSEPH KIHARA KIRANJA.....2ND APPLICANT

-versus-

REPUBLIC RESPONDENT

R U L I N G

Simon Keega Muriithi and Joseph Kihara Kiranja hereinafter referred to as the 1st and 2nd applicants were arraigned before the Chief Magistrate's Court, Nyeri, to face a charge of four counts. In Counts I and II, the first applicant faced a charge of corruptly offering a benefit contrary to **Section 39(3) (b)** as read with **Section 48(1)** of the **Anti-Corruption and Economic Crimes Act No.3 of 2003**. In Count III, the 2nd Applicant faced a similar charge as those stated in counts I and II. The duo were however jointly charged in Count IV with the offence of conspiracy to commit an offence of corruption contrary to **Section 47A (3)** as read with **Section 48(1)** of the **Anti-Corruption and Economic Crimes Act No.3 of 2003**. The duo pleaded not guilty. They were released on a cash-bail of Kshs.200,000/= pending trial. The 2nd Applicant has now taken out the originating Notice of Motion dated 19th May, 2010 pursuant to the provisions of **Section 65(2)** of the **Constitution and Section 123(3)** of the Criminal Procedure Code.

In the aforesaid motion the 2nd applicant has beseeched this court to review downwards the terms of the cash bail from Kshs.200,000/= to Ksh.50,000/=. He has averred that he is unable to raise the cash bail fixed by the learned Chief Magistrate. The 2nd applicant offered to deposit the logbook of his motor vehicle registration number KBK 323 B as a security for bond pending trial. Mr. Makura, learned Senior State Counsel indicated that the state was not opposed to the Application.

I have considered the oral submissions of Mr. Ng'ang'a, learned advocate for the 2nd Applicant. I have also considered the grounds set out on the face of the originating motion and the facts deponed in the affidavit of the 2nd Applicant filed in support of the motion.

I have also critically looked at the provisions of **Section 123(3)** of the **Criminal Procedure Code**. This court is given an unfettered discretion to alter the terms of cash bail and or bond terms given to an accused by the Subordinate Court. It is not in dispute that the applicants were released on a cash bail of Kshs.200,000/=. The 2nd Applicant has said he is unable to raise the amount. He has urged this court to reduce the cash bail to Kshs.50,000/= or in the alternative grant him bond terms instead of a cash bail. I have already stated the counts where the 2nd Applicant is involved. In Count III, the 2nd Applicant is alleged to have offered Ksh.69,000/= to one William Matu Mutahi as an inducement to irregularly release 35 electricity poles valued Ksh.386,190. In count IV the 2nd applicant is jointly charged with the 1st Applicant for the offence of corruptly conspiring to offer a benefit of Ksh.320,000/= to facilitate the irregular release of 160 electricity poles the property of Kenya Power & Lighting Company Limited. It would appear the amount involved in those transactions is Ksh.706,000/=. The purpose of bail/bond pending trial is to ensure that accused person readily avail themselves in court during their trial. Under **Section 123 (2)** of the **Criminal Procedure Code**, it is clearly stated that the bail terms shall not be excessive. The 2nd applicant in this case, seems to suggest that the cash bail meted out is excessive. I have already stated that the amount involved in the saga is way above

Ksh.700,000/=. The penalty for such offences is given under S. 48(1) of the Anti-Corruption and Economic Crimes Act to be a fine of Ksh.1,000,000/= or an imprisonment term of 10 years. In the circumstances of this case, I do not find the cash bail meted out to be excessive. However, the learned Chief Magistrate should have given the applicants an alternative bond terms instead of restricting herself to cash bail. I will give the 2nd Applicant bond terms as an alternative to the cash bail. Consequently, the 2nd applicant herein should in the alternative and in place of the cash bail be released upon signing a bond of Ksh.300,000/= with one surety of like sum.

Dated and delivered this 28th day of May 2010.

J. K. SERGON

JUDGE