



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
MILIMANI LAW COURTS
CIVIL DIVISION
CIVIL SUIT NO. 327 of 2010

(From the original Criminal Case No. 2727 of 2010 of the Chief Magistrate's court at Kibera)

JOHN MUGOSHA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Application brought under Section 123 to 126 and 79 (a) – 81 of Criminal Procedure Code and all enabling provision of law. The application seeks the court to grant bail and bond in the Chief Magistrate Case No. 2727/2010 was denied.

That the applicant is ready to comply with the terms of the bond thus granted. Replying Affidavit No. 2307/46 Adam Guyo Investigating Officer currently attached to Anti Narcotics Unit at Jomo Kenyatta International Airport. He was investigating Kibera Chief Magistrate Cr. Case No. 2727 where the applicant is charged inter alia in trafficking Narcotic Drugs contrary to Section 4(a) of Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994.

On 7th June 2010 the accused John Mgisha was arrested by Anti-narcotic police officers at Jomo Kenyatta International Airport while travelling with Kenya Airways Flight No KQ 412 for trafficking 21.2411 Kilogram of Narcotic Drugs namely COCAINE with the market value of Shs. 849,644,000/= which was packed in two black boxes each labeled United Nations Diplomatic Bag.

In that case the Applicant had been charged with one Anne Birungi Bisaso and the case against the two John Mugisha and Anne Birungi Bisaso had been consolidated in the lower court.

Though the offence is bailable, the punishment is life imprisonment and a fine of Shs. 254,893,200/=. The Applicant promises to abide by any conditions ordered by court there are chances of him absconding.

There is also information that he had obtained a diplomatic fraudulently.

The accused person is facing a serious offence that attracts a fine of 1 Million Kenya Shillings or three times the market value of the drug (Shs. 254,893,200/=) which cover is greater and therefore he might be tempted to abscond. The Applicant had labeled her luggage United Nations.

The Applicants have supported their application with authority.

(1) The ruling No. 462 of 2009 Wanjohi vs. Republic. The court ought to consider the gravity of the offence with which the Applicant are charged and the interest of justice when deciding on the issue of granting bail.

(2) Nganga vs Republic Misc. Criminal Application No. 61 of 1981 where the court held:

(a) In principle the cause of principle that a person charged with a criminal offence is innocent until his guilt is proven by prosecution an accused being tried should be granted bail unless it is shown by the prosecution that there is substantial ground believing.

(i) The accused will fail to turn up for trial or to surrender to custody.

(ii) The accused may commit further offences.

(iii) He will obstruct the cause of justice.

(b) The court must consider the weight of the punishment

(3) George Anyona & 3 Others vs Republic Misc. High Court Application No. 358 of 1990.

This decision is related to the decision referred to in connection with what was said by Cheson J. in Nganga's judgment. The nature of charge or offence the seriousness of the punishment to be awarded if found guilty.

Also there is Criminal Application No. 43 of 1993 Njehu Gatabaki vs. Republic where the court discussed at length and eventually released the Applicants. In the present case there is no doubt the case is serious and the punishment is heavy. The prosecution has difficulties with these person who in the past have been granted bail.

Information on Mugisha John. He is said to have forged support documents. He is not known to be a Protocol Officer.

The application is not merited and the application is rejected.

I have come to the conclusion that the application is not merited and the same is

dismissed.

Dated and delivered at Nairobi this 16th day of September 2010.

J. N. KHAMINWA

JUDGE