

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Miscellaneous Criminal Case 338 of 2009

JOHN MAKUMI MUASYAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The application has been brought under section 123 and 124 of the Criminal Procedure Code, Cap 75, Laws of Kenya together with all enabling provisions of the law. The application seeks the following orders:

(a) THAT Honourable Court be pleased to admit the Applicant to bond terms applying in Nairobi Chief Magistrates Criminal Case No. 135 of 2009 and the amount of cash bail deposited thereon be reversed and it be treated and or applied as cash bail and in addition the Applicant be granted bond in criminal case Nos. 284 of 2009 and 831 of 2009.

(b) THAT in the alternative the court gives fresh bond terms and orders that the finding by the chief magistrate in the forfeiture of the cash bail deposited by the Applicant in Nairobi Chief Magistrate's Court Criminal Case No. 135 of 2009 was arbitrary and uncalled for and it orders for its refund to the depositor.

During the hearing of the application, Mr. Nyaberi, for the applicant, prayed for prayers No. 2 and 3 while relying on the affidavit that was deposed by his client. According to Mr. Nyaberi, the applicant was absent from court on 4th March, 2009 and hence a warrant of arrest was issued. He further submitted that the annexed documents show that the applicant was being attended to in hospital. However, when he went to court, he was arrested outside the registry. Consequently, on 30th April 2009, the applicant was given a chance to show cause why he should not forfeit cash bail of Kshs. 100,000/-. After the applicant gave an explanation and tendered the documents exhibited here, the Chief Magistrate made an order of forfeiture of the above cash bail on 6th June, 2009. In addition to the above, the learned magistrate also cancelled the bond. Apart from the above, the applicant was also denied bond in the following two cases.

- Criminal Case No. 284 of 2009

and

- Criminal Case No. 831 of 2009.

Terming the order by the learned magistrate as arbitrary, the applicant's counsel further explained that the applicant took himself to the court.

On the other hand, the State through Ms. Maina has objected to the application while relying on the proceedings in Criminal Case No. 135 of 2009. Besides the above, Ms. Maina further submitted that the applicant has absconded court on three different occasions. Though he was represented by an advocate, the latter never bothered to inform the court about the whereabouts of his client. In addition to the above,

the learned State Counsel also submitted that the applicant was given an opportunity to show cause why he did not attend court. According to Ms Maina, the applicant only attended hospital on 2nd and 14th May, 2009. She pointed out that the documents produced in court related to the month of March, 2009.

This court has carefully considered the application together with the medical documents produced in court. Apart from the above, the court has also perused the ruling that was delivered by the learned Chief Magistrate on 9th June, 2009. The same is well reasoned and logical. I do concur with the State Counsel that the applicant attended hospital on 2nd and 14th May, 2009 only. The applicant never explained his whereabouts in the month of March, 2009. On that score, the learned Chief Magistrate exercised his discretion reasonably and judiciously. Due to the above, I do not wish to interfere with his decision. This court is of the considered opinion that the forfeiture of the cash bail of Kshs. 100,000/- was justified under the circumstances. In exercise of my discretion and powers, I hereby direct that the applicant be released on a fresh cash bail of Kshs. 75,000/- in this case. I also direct that the applicant be released on similar terms for the other two cases – namely Criminal Case No. 284 of 2009 and Criminal Case No. 831 of 2009. Simply put, the applicant will have to pay a total sum of Kshs. 225,000/- to be released for the three cases. Those are the orders of this court.

MUGA APONDI

JUDGE

Ruling read, signed and delivered in open court in the presence of Ms. Maari for Mr. Nyaber - Defence Counsel

Mr. Obiri State Counsel

MUGA APONDI

JUDGE

22ND OCTOBER, 2009