



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Revision 30 of 2008

CHAWA FRANCIS ALIAS STEPHEN.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in Criminal Case No. 148 of 2008 of the Chief Magistrate's Court at Nairobi by

E. Cherono – SRM)

RULING

The learned counsel for the applicant, Mr Kuloba requested this court to call for the file in Chief Magistrate's Court 148 of 2008 *Republic versus Chawa Francis alias Stephen* and Caroline Mbunya Kathondu, for the purpose of revision under the provisions of Section 362 and 364 of the Criminal Procedure Case.

By a letter dated 11th April, 2008, the advocate wrote to the Deputy Registrar of the High Court stating that the learned magistrate Hon. Bidali ordered that first accused be released upon executing a bond of Kshs 500,000/- together with two(2) Kenyan sureties of similar amount. The first accused managed to come up with sureties who had adequate security in the form of the two(2) vehicles and the bond documents were duly executed. However, Hon. Bidali was transferred before he could sign the release order for first accused and sitting in for him was Hon. Cherono. It is alleged that Hon. Cherono declined to sign the release order in respect of the first accused stating that his interpretation of the ruling by Hon. Bidali dated 5th March, 2008 required a deposit of cash and not execution of the bond form.

It is also pointed out that infact second accused was the one ordered to deposit a cash bail and not execute a bond. It is therefore Mr Kuloba's contention that the learned magistrate Hon. Cherono misdirected himself in law and in practice on the requirement of executing bond on the terms granted to the first accused injustice. It is further stated in that letter that the orders dated 5th March, 2008 have never been varied to require cash bail being deposited in respect of first accused.

I have read through the record of 5th March, 2008 by Hon. Bidali – which read as follows –

“The offence is bailable. First accused be released On a bond of Kshs 500,000/- plus two Kenyan Sureties of a similar amount.”

On 26th March, 2008, Mr Kuloba appeared for variation of bond terms but this was rejected by the learned magistrate. Thereafter on 4th April, 2008, Mr Kuloba appeared before Hon. Cherono and sought clarification saying –

“There is a misconception of the bond granted to the first accused person. We have complied with the same but we have been told that the court is demanding cash Kshs 500,000/- I need clarification.”

Whereupon the learned magistrate stated –

“I have looked at the order of my brother granting bond to the first accused herein. In my own interpretation the first accused is required to deposit a cash of Kshs 500,000/- plus two sureties.”

The wording by Hon. Bilal is –

“First accused be released on a bond of Kshs 500,000/- NOT on “cash bail” of Kshs 500,000/- Would the two phrases have the same meaning?”

I think the answer to this is found in the provisions of two sections in the Criminal Procedure Case. Section 124 Criminal Procedure Case deals with Bail Bond and provides that –

“Before a person is released on bail or on his own recognizance, a bond for such sum as the court or police thinks fit, shall be executed by that person when he is released on bail, by one or more sufficient sureties conditioned that the person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court or police officer.”

In such a situation as envisaged by section 124 Criminal Procedure Case, the accused needs to bond himself in writing by signing the bond papers that if he fails to attend court whenever required to do so, then he shall pay to the court the sum so indicated in the bond, upon his arrest. The sureties ordered are to guarantee this by depositing security worth the sum instructed by the court. The sureties too undertake to produce the accused person whenever required. That is the meaning of bond with a surety.

Then section 126 refer to deposit instead of recognizance stating this –

“When a person may be required by a court or officer to execute a bond, with or without sureties, the court or officer may, except in the case of a bond for good behaviour, require him to DEPOSIT A SUM OF MONEY to such amount as the court or officer may deem fit or to deposit property in lieu of executing a bond.”

The operative words would then be *deposit* a sum of money and this is where cash bail would be required.

There is a difference between cash bail and bail bond or commonly referred to as bond with surety, and the order by Hon. Bidali was clearly one on bail bond, not cash bail and to this extent with all due respect to the Hon. Mr Cherono, he misdirected himself and his directions thereto were not correct or proper.

The correct position as per the order of 5th March, 2008 is that the accused be released upon executing a bond of Kshs 500,000/- with two Kenyan sureties of similar amount and this should be complied with accordingly.

Delivered and dated this 9th day of May, 2008 at Nairobi.

H.A. OMONDI

JUDGE.