



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**(Coram: Ojwang, J)**

**MISC. CRIMINAL APPLICATION NO. 203 OF 2008**

**BETWEEN**

**BASILEO MWIANDI MIRITI alias**

**JAMES KASYULA MUTUA.....APPLICANT**

**-AND-**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant is currently undergoing trial for the offence, *inter alia*, of making a false document contrary to s.347 as read with s.349 of the Penal Code. During the pendency of trial, the applicant has been given bond terms in the form of a cash bail of Kshs.500,000/=, which sum he has been unable to pay, and as a consequence of which he remains in custody.

The applicant, represented by his advocates, M/s. J.W. Wanjohi & Co. Advocates, comes before this Court by Notice of Motion dated 11<sup>th</sup> April, 2008 and prays that the said cash bail, ordered by the Senior Principal Magistrate, be reduced to reasonable terms.

Upon hearing counsel on both sides, it has become clear to me that the applicant is not in a position to meet the bail terms ordered by the trial Court.

In this Court, it may quite properly be supposed that the trial Court had sensed that this was a matter in which release of the applicant on bond was not inappropriate. But the terms of bond then granted, it is clear, are too burdensome for the applicant to meet – with the consequence that he will not benefit from the bond granted. Learned counsel **Mr. Wanjohi** submits that this is a case in which the freedom to be tried while at liberty had been granted but also refused, at the same time.

Learned Respondent's counsel, **Mr. Makura** does not object to a variation of the bond terms, and urges that this Court, by virtue of s.123 of the CPC may make any such variation of bond terms as may be found appropriate.

All these circumstances show a case in which a variation of bond terms will be in order; and I will now set aside the bond-term order of the trial Court, and replace the same with the following orders –

1. The applicant may be released, during the pendency of trial, on a cash bail of Kshs.200,000/=;
2. In the alternative, the applicant may be released, during the pendency of the trial, on an own bond, supported by a security of a title to property acceptable to the Court, bearing a value of not less than Kshs.400,000/=; such property may be a motor vehicle or similar asset, with valid documents of title.
3. This matter shall be listed for mention before the Deputy Registrar on 7<sup>th</sup> May, 2008.

***Orders accordingly.***

**DATED and DELIVERED** at Nairobi this 5<sup>th</sup> day of May, 2008.

**J.B. OJWANG**

**JUDGE**