

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Misc. Application 228 of 2008

MWANYA MIGADDE.....APPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

MWAYA MIGADE (the applicant) has filed an application dated 21st April, 2008 by way of Chamber Summons seeking court to vary the orders made by Hon. Justice Dulu on 20th December, 2007. The applicant was granted bail pending appeal and the orders were inter alia that:-

“The appellant will appear before the Deputy Registrar of this court for mention every two weeks until the appeal is heard with with the first mention being on 3rd January, 2008.”

It is this condition which the applicant seeks to be varied and suggests mention be after 90 days or any other period deemed expedient. The reason for this request is that the applicant is a businessman who frequently has to travel out of Nairobi to be able to carry out his business activities and earn his livelihood, he needs a longer period extended for the mention dates.

The supporting affidavit sworn by the applicant simply reiterates the grounds alluded to. His Counsel Mr Rambo submitted that the applicant has been compliant with the conditions earlier set but the bi-weekly court attendance has severally hampered applicant’s ability to carry out his business matters which requires him to be out of Nairobi often.

The learned State Counsel had no objection but suggested that the period be varied to at least one month. Mr Rombo’s response is that one month would be restrictive and the appeal will take longer than six months before its even fixed

for hearing. He explained that the applicant is a petrol fuel dealer and requires to be in Eldoret, Lokichoggio and Sudan every three or four weeks and sometimes when he goes to Sudan it takes him even one month.

The explanation given appears rational to me. I think applicant should be allowed to live his life as normal as possible.

I will therefore allow the application affecting No. 2 of the earlier orders made on 20th December, 2007 to be varied to this effect:-

The applicant will appear before the Deputy Registrar of this court for mention every two months until the appeal is heard – this takes effect from the date of the next scheduled mention.

Delivered and dated this 11th day of June, 2008 at Nairobi.

H.A. OMONDI

JUDGE