



REPUBLIC OF KENYA

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

MISCELLANEOUS CRIMINAL APPLICATION NO. 277 OF 2008

EPHANTUS MUURU WAMWEA APPLICANT

-AND-

REPUBLIC RESPONDENT

RULING

The applicant moved the Court by Chamber summons dated 13th May, 2008 and filed by virtue of ss.123 (1), (3); 125; 126; 132; and 133 of the Criminal Procedure Code (Cap.75, Laws of Kenya).

The main prayer is that “this Honourable Court be pleased to order reinstatement of the applicant’s bond cancelled by the Magistrate at Kikuyu Law Courts on 28th June, 2007. In the alternative, the applicant seeks to be admitted to bond “on such terms and/or conditions as may be just and expedient”.

The general grounds founding the application are, firstly, that the accused “has poor health history and has frequented hospital before and during incarceration”; secondly, that the various hospitals have “recommended special diet and bed rest” for the applicant; thirdly, that the condition of the accused has “deteriorated to the lowest level ... because of lack of amenities and facilities for his health management at Industrial Area Remand Prison”; fourthly, that “ the applicant inadvertently failed to attend Court in *Criminal Case No.1211 of 2005* at Kikuyu Law Courts on divers dates being 16th May, 2007, 12th June, 2007, 19th June, 2007 [and] 26th June, 2007 because he was sick and attending Court in Kibera in Criminal Cases 7533 of 2005 and 3355 of 2006”, and on that account his bond was cancelled; fifthly, that there is no risk of flight of the applicant, since his passport was deposited at Kikuyu Law Courts during his admission to bond at the commencement of the case against him in Crim. Case No.1211; and sixthly it is stated that the accused person is ready and willing to attend Court, and to abide by any other bond terms such as may be imposed.

The grounds above-summarised are detailed out in a supporting affidavit sworn by the applicant on 13th May, 2008.

At the hearing of the instant application, learned respondent’s counsel, **Mrs. Gakobo** stated that the applicant was an accused person in several matters before different Courts, and it was desirable that the Court should see the relevant files. An order was then made for the several other files to be called for and placed before the Court. This was subsequently done; and the relevant files are as follows:

(i) Criminal Case No.1211 of 2005, **Republic v. Ephantus Muuru Wamwea**, at Kikuyu Law Courts; the charge here is, *obtaining money by false pretences contrary to s. 313 of the Penal Code (Cap. 63, Laws of Kenya)*;

(ii) Criminal Case No.7533 of 2005, **Republic v. Ephantus Muuru Wamwea**, at Kibera Law Courts; the charge here is *obtaining money by false pretences contrary to s.313 of the Penal Code*;

(iii) Criminal Case No. 3355 of 2006, **Republic v. Ephantus Muuru Wamwea**, at Kibera Law Courts; the charge here is similar, namely, *obtaining money by false pretences contrary to s.313 of the Penal Code*.

Learned applicant's counsel, **Mr. Odiwuor** canvassed the application on behalf of the applicant. He in particular underlined the applicant's avowed illnesses – hypertension, diabetes, asthma, tuberculosis and ulcers – as the primary justification for his case for reinstatement of bond, or for admission to a new bond. Counsel said that the applicant's affliction with diabetes, hypertension and ulcers had been noted at Kikuyu Nursing Home, where the applicant had “suddenly collapsed”, upon admission. Counsel urged that the applicant suffers from acute duodenal ulcers, and that even at the remand facility, it had been noted that he had acute bronchitis. Counsel produced a letter said to be from Kenyatta National Hospital, and addressed “To Whom it May Concern”, calling for a special feeding regime to be availed to the applicant. Counsel said: “These sicknesses are the basis of the application for reinstatement of bond”. Counsel submitted that remand prisons lacked the special diet which was recommended for the applicant. He said of the applicant: “He is still undergoing treatment; he walks with tubes on his body; and the Court had not considered these when cancelling bond”.

Counsel submitted that the applicant was married with four children, and was a “minister of the gospel”; “he is ill, he is not about to flee. He is sole bread-winner for his family”.

Learned respondent's counsel, **Mr. Muriithi** contested the application. He highlighted the circumstances leading to the cancellation of bond: the applicant was required to attend Court, but he failed to do so; and then one **Catherine Wanjiru** stood up, produced a document described as a medical document, and stated that the applicant herein was unwell. When the Court allowed adjournment to another date, still, the applicant did not turn up. Again a letter was produced in Court stating that the applicant was unwell – but the Court did not find the letter to be genuine. The trial Court set yet another mention date, 26th June, 2007 – but again, the applicant did not turn up: his counsel turned up, and informed the Court that the applicant was then appearing before a Kibera Court, in connection with some other charge brought against him. There was, however, no bond or any other document to show that, indeed, the applicant was appearing before Court at Kibera. When the matter was again mentioned on 28th June, 2007, counsel for the applicant came to inform the Court that the applicant had been admitted in hospital. It looked odd, learned counsel for the respondent urged, that on 26th June, 2007 the applicant was said to be before a Kibera Court, but two days later he was unavailable for a different reason.

Learned counsel doubted the authenticity of the hospital documents which counsel for the applicant was placing before the Court; the letter from Kikuyu Maternity Home, attributing several illnesses to the applicant, had not at all been placed before the Court at Kikuyu which cancelled the bond; and this document was not properly endorsed, and so counsel urged that it be not relied upon. No discharge summary from any health facility had been placed before the Court, and, counsel urged, this showed the documents which counsel for the applicants brought to Court, to have no basis of authenticity.

Learned counsel urged that the application be dismissed, as it had become apparent that the applicant was endeavouring to defeat the prosecutorial process. As the applicant had been in breach of the bond terms, counsel urged that cancellation of bond had been quite properly done.

I have carefully considered the content of the applicant's prayers, and the affidavit sworn in support. I have also anxiously listened to counsel on both sides. I have perused the several case-files in which the applicant herein is the central figure. On the basis of all these, I have come to the conclusion that the learned Senior Principal Magistrate at Kikuyu Law Courts exercised her discretion properly, in cancelling the bond which had been given in favour of the applicant. The applicant was in breach of the bond terms by failing on several consecutive occasions to appear in Court as required; and the applicant, through his advocate, has brought before the Court documents which lack the quality of genuine and valid medical documents.

The applicant's application by Chamber Summons dated 13th May, 2008 is *refused*.

The several files in respect of which the applicant is an accused person, namely Criminal Case No.1211 of 2005 at Kikuyu Law Courts; Criminal Case No. 7533 of 2005 at Kibera Law Courts; and Criminal Case No.3355 of 2006 at Kibera Law Courts – shall be returned for priority mention before the respective Chief Magistrates of those stations, who will give appropriate *directions* for the expeditious hearing and determination of the cases in question.

Orders accordingly.

DATED and DELIVERED at Nairobi this 24th day of September, 2008.

J.B. OJWANG

JUDGE

Coram: Ojwang, J

Court Clerk: Huka

For the Applicant: Mr. Odiwuor

For the Respondent: Mr. Muriithi