

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

Misc Crim Appli 238 of 2008

(From Criminal Case No. 254 of 2007 C. M.'s Court Nairobi)

BALAKUMAR PONNITHURAIAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

In the Chamber Summons application dated 18th July 2007, the applicant seeks;

“That the Honourable Court be pleased to allow the applicant to travel to India and London for 20 days for the month of December 2008 and January 2009”.

The basis of the applicant’s application is that his father passed away on 30th December, 2007 when he was still in custody awaiting the hearing and determination of his matter which is pending before the lower court. The applicant made a similar application before the lower court which was rejected. **Mr. Ondieki** learned counsel for the applicant submitted that after the cremation of the applicant’s father, the applicant who is the only child is required to take over the property left behind by his father. And secondly without the applicant going to India, certain religious rituals cannot proceed. And it is for that reason that the applicant intends to travel to India and London in order to attend urgent family matters.

I have considered the nature of the application and the charges facing the applicant in this case. I have also considered the submissions by **Mr. Ondieki** the learned counsel for the applicant. Having taken into consideration all the pertinent matters in this matter, it is my considered view that there is no basis for me to interfere with the discretion exercised by the trial court. As was rightly pointed out by the trial court the likelihood of the applicant absconding if he leaves the jurisdiction of this court is completely high. Secondly I am also highly skeptical of the authenticity and validity of the documents relied upon by the applicant to demonstrate the death of his father and the sickness of his mother. In the circumstances it is not safe to allow the applicant to travel out of the jurisdiction of this Honourable court when his case is pending before the lower court. The totality of the evidence that were rendered before me gives me one impression which is that the applicant is likely to abscond from the jurisdiction of this honourable court. I therefore see no reason to warrant me to interfere with the ruling that refused the applicant to leave jurisdiction of this honourable court when his trial is pending.

In the premises the application dated 18th July, 2008 has no merit and it is hereby dismissed. I direct the trial court to proceed with the matter on priority basis. I direct the applicant to appear before the trial court for mention on 13th November, 2008 for further directions and orders.

Dated, signed and delivered this 10th November, 2008.

M. WARSAME

JUDGE