

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Misc Crim Case 9 of 2007

TUBOR MULNAR.....1ST APPLICANT

ZSSUZSANNA BANSKI ZSUDOR.....2ND APPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

Pursuant to a motion taken out under Sections 60,74 and 84 of the Constitution and Section 123 (3) of the Criminal Procedure Code, the applicants herein namely: Tibor Mulnar and Zssussanna Banski Szudor applied to be admitted to bail pending arrest to secure or protect their liberties. Tibor Mulnar swore an affidavit in support of the motion. The applicant's application proceeded for hearing exparte in view of the fact that it was so urgent and that the applicants were at the risk of being arrested.

The applicants aver that they are Hungarian Nationals who have put their investments in Kenya as foreign investors through a company known as Constellation Ltd. They have estimated the value of their investment to be Kshs.14 million. The duo claimed that they incorporated one Kennedy George Otieno James as a director in their company. They now claim that Mr. Kennedy George Otieno James has schemed to have them deported from Kenya so that he may unjustly inherit or grab their investments.

The applicants have annexed to the affidavit of Tibor Mulnar documents to show that they have already been summoned to appear before the immigration officers for grilling. The applicants now claim that Kennedy George Otieno James had procured fake visas to enable enter this country and that he has now reported the anomaly to the immigration office so that the applicants are deported after which he will take over their investment.

I have carefully considered the applicants submissions. I have also taken into account the material placed before me. The issues raised in this motion are very serious. They touch on foreign investments and individual Civil liberties. The motion also reveals that some criminal offences may have been committed when the applicants started their foreign investments in Kenya.

After a careful consideration of the issues raised in this matter I have come to the conclusion that the dispute can only be resolved if all the parties mentioned or accused are invited to state their side of the story. However, before they are invited to do so, the status quo should be preserved first. At this interlocutory stage, the applicants should not be arrested nor deported by the Respondent. The Respondent is at liberty to carry out its investigation without hindrance. The applicants should therefore submit themselves for interrogation before the Respondent when required but the Respondent should ensure that the applicants are not confined in custody before the hearing and determination of this motion.

The applicants are directed to have the motion amended to include the names of Kennedy George Otieno James as a party in these proceedings and thereafter to have the amended motion served upon the Attorney General and Kennedy George Otieno James. The motion should be amended and served within 14 days from the date hereof. The same is fixed for interpartes hearing on 9/3/2007. By then all parties should have filed their responses.

Dated and delivered at Mombasa this 21st Day of February 2007.

J.K. SERGON

J U D G E

In open court in the presence of Mr.