



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

Misc Crim Appli 546 of 2006

(CORAM: LESIIT, J.)

MARK KITHINJI.....APPLICANT

VERSUS

REPUBLICRESPONDENT

(CORAM: LESIIT, J.)

R U L I N G

The Applicant seeks the consolidation of two criminal cases against him for the purposes of hearing and determination and for purposes of consolidating the bond terms granted in each file. He also seeks any other order this court deems fit to issue. The two files quoted are before me in Criminal Case No. 1333 of 2006, the Applicant faces 6 counts related to making of documents without authority and uttering false documents all under the Penal Code. In Criminal Case No. 1334 of 2006, the Applicant faces 10 counts of **making documents without authority, uttering forged documents, personation and stealing** all under the Penal Code.

The Applicant argues that the consolidation of the two cases will make it more convenient to both the prosecution and himself and will cause the trial to move faster. This has however been opposed by **Mrs. Kagiri** who stated that such an attempt will only cause the Applicant to face an overwhelming number of counts. **Mrs. Kagiri** also submitted that the offences in both files though similar in nature were committed at different times and various places in the country. Counsel felt that the consolidation may work against the Applicant by causing him prejudice.

I have considered this application. The consolidation of both files will result in one charge sheet of 16 counts of varied offense. In the Court of Appeal case of OCHIENG vs. REPUBLIC [1985] KLR 252, **Hancox, JA, Platt and Gachuhi Ag. JJA** held:

“It is undesirable to charge an accused person with so many counts in one charge sheet. That alone may occasion prejudice. It is improper for a court to put the prosecution to its election at the inception of the trial as to the courts, upon which it wishes to proceed. Usually, though not invariably, no more than twelve counts should be laid in a charge sheet.”

In the instant case, the prosecution charged the Appellant in two separate files not because of wanting to proceed with a reasonable number of counts but because the offences were committed at different times

and they are unrelated. The files should not in the circumstances be consolidated since the total number of counts will exceed the recommended maximum. Most importantly, such a consolidation may cause the Applicant to suffer prejudice.

I decline to grant prayer 1 of this application. As for prayer two, I have examined bond terms in both files and I find those in **Criminal Case No. 1333 of 2006** excessive. The Applicant faces a charge of attempting to steal Kshs.100,000/-. He was ordered to deposit cash bail of Kshs.100,000/-. Subsequently at his request, bond terms were varied to bond of 200,000/- with one surety of like amount. The terms of bond in this case are excessive.

I set aside bond terms ordered in **Criminal Case No. 1333 of 2006** and vary them to bond of Kshs.50,000/- with one surety of similar amount.

Subject to the variation of bond in **Criminal Case No. 1333 of 2006** the Application is dismissed.

Dated at Nairobi this 3rd day of March 2007.

.....

LESIT, J.

JUDGE

Read, signed and delivered in open court:

Applicant present

Mrs. Kagiri for the Respondent

Tabitha CC

.....

LESIT, J.

JUDGE