



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Crim Appli 239 of 2007

PERRY MUHINDI ACHEGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Before me is a Chamber Summons dated 18th March 2007 filed by the applicant PERRY MUHINDI ACHEGA. The application does not cite the section of the law under which it is brought. The applicant seeks for the following orders that –

1. This Honourable court may be pleased to order for reduction of my bond in criminal case No. 87 OF 2007 NOW PENDING IN chief Magistrates Court at Nairobi.
2. This Honourable court may be pleased to grant me any other orders it may deem fit and just.

The application is supported by an affidavit sworn by the

applicant. At the hearing of the application, the applicant submitted that he was charged with theft of cheques from Bank of India Ltd. of the value of more that Kshs. 26 million. He submitted that the trial magistrate initially put him on cash bail of Kshs. 1 million. He applied for review of the bail terms. The magistrate reviewed the bail terms to bond of Kshs.6 million with one surety. The applicant applied again for review of the bond terms before the magistrate. The magistrate reviewed them to two sureties of Kshs. 3 million each. He therefore asked for the bail/bond terms to be reviewed by this court.

Learned State Counsel, Ms. Gateru, opposed the application. She contended that the terms of bal/bond imposed by the magistrate were neither harsh nor excessive bearing in mind the nature of the charges faced by the applicant. In addition, the bond terms had already been varied a number of times by the magistrate. Counsel contended that the inability of the applicant to meet the bond terms was not a ground for review of the terms.

In response the applicant submitted that the bond terms imposed were excessive, and that he was the sole breadwinner.

This court has jurisdiction under section 123(3) of the Criminal Procedure Code (Cap. 75) to vary the terms of bond imposed by a subordinate court. The said section provides –

“123(3) The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or a police officer be reduced”

The principles governing the granting or refusal of bail were considered by Bosire J (as he then was in MWAURA –vs- REPUBLIC [1986] KLR 600. The court held –

“2. The principles applicable in considering granting or refusing bail are: the nature of the offence, the strength of the evidence, the character or behaviour of the accused and the seriousness of the punishment which may be awarded if the accused is found guilty.

3. The primary and underlying consideration

in considering whether to grant bail is the

accused will turn up at the appointed place

and time for his trial”

In my view, a court has wide discretion in determining what terms of bond to impose. However, section 77(5) of the Constitution requires the terms of bond to be reasonable, and at the same time to ensure that an accused person appears for the proceedings or the trial.

The applicant was charged before the subordinate court with one count of theft of several cheques valued at Kshs.26,864,823.25 contrary to section 275 of the Penal Code. The maximum sentence under that section is three years imprisonment. The latest reviewed terms of bond require two sureties of Kshs. 3 million each. The nature of the offence is simple theft. There is no indication from the learned State Counsel that the applicant is of a bad character. The maximum punishment for the offence is three years imprisonment. The State Counsel does not state that the applicant is likely not to attend trial. Taking all these factors into account, I am of the view that the bond terms imposed by the trial magistrate were harsh and excessive. They are not reasonable terms to ensure the attendance of the applicant at the trial. That is what the terms of bond are required to ensure, the attendance of the accused at the trial. I am persuaded to review the bond terms imposed by the trial magistrate. I order that the bond terms shall be as follows –

1. Applicant/accused to be released on bond of Kshs.400,000/= with one surety of similar amount.
2. Applicant to deposit any passport, if he has one, to court.

It is so ordered.

Dated and delivered at Nairobi this 30th day of May 2007.

George Dulu

Judge