

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Crim Misc 10 of 2007

JOSEPH KINYUA KABETE 1ST APPLICANT

JACKSON MUGAMBI KABETE 2ND APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The applicants are charged in the court below at Marimanti with the offence of assault contrary to Section 251 of the Penal Code. They were granted cash bail in the sum of Kshs.20,000/= each.

They have now approached this court in an application of 7th March, 2007 praying that the bail terms be reviewed and/or varied on the grounds that the bail terms are excessive and that the applicants are peasant farmers who cannot raise Kshs.20,000/=. They have also averred that they will not abscond if given favourable bail terms.

The application was opposed by counsel for the State who submitted that the two applications ought to have been brought separately. Secondly counsel argued that the applicants should have made the application before the trial court and finally that the application has been brought under the wrong Section of the Criminal Procedure Code.

I will start with this point. The application is expressed to be brought under Section 362 of the Criminal Procedure Code, which donates to the High Court the power to call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. Clearly this is not what is sought in this application. The applicants would like their bail terms reviewed. That application ought to have been made in the first instance to the trial court. However, under Section 123(3) of the Criminal Procedure Code, introduced by Act No.5 of 2003.

The High Court may reduce the bail required by the subordinate court. The two applicants are jointly charged in the court below and the order they seek to be varied affect both of them. I find no prejudice in the fact that they have brought this application together. Similarly the citing of a wrong provision of the law has not affected the application.

I am satisfied that in view of the offence charged and the applicant's disposition, the cash bail ordered is high. The same is reduced to Kshs.5,000/= for each applicant.

Orders accordingly.

DATED AND DELIVERED AT MERU THIS 7TH DAY OF May, 2007

W. OUKO

JUDGE