



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

Misc Crim Appli 389 OF 2007

GEOFFREY MAINA WACHIRAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Before me are three applications filed by way of Chamber Summons brought under Section 123(3) of the Criminal Procedure Code all dated 31st May 2007 filed by Omosa & Company advocates on behalf of the applicants. The applications are Miscellaneous Criminal Application No. 389 of 2007 in which the applicant is named as **GEOFFREY MAINA WACHIRA**; Miscellaneous Criminal Application No. 390 of 2007 in which the applicant is named as **JEREMIAH MIANA MWANGI**; and Miscellaneous Criminal Application No. 391 of 2007 in which the applicant is named as **GEOFFREY WAWERU MUGUCHIA**.

Similar orders are sought in the three applications that –

1. (spent).
2. The Honourable Court be pleased to vary and/or vacate the orders of bail granted to the applicants in Criminal Case No. 805/07.
3. The Honourable Court be pleased to release the application on fresh and/or reduced affordable cash bail term and in the alternative bail/bond surety.

The three applications have similar grounds. They are also supported by respective affidavits sworn by the applicants. The grounds are that the applicants were charged with the offence of obtaining by false pretences contrary to Section 313 of the Penal Code; the learned trial magistrate gave bond terms of Kshs.400,000/= cash bail with no alternative of bond surety; that the applicant's have been unable to raise the Kshs.400,000/= required as cash bail; that they applied for variation of bail before the learned trial magistrate but which had not been done; that the failure of the subordinate court to give alternative bond/surety was illegal and punitive; that the applicants were likely to remain in custody unless this court intervenes to vary and/or vacate the punitive bond terms; and that the applications were made in good faith.

At the hearing the three applications were consolidated and heard together, as the three appellants were charged jointly in the same count.

At the hearing of the applications counsel for the applicant Ms. Omosa submitted that they were seeking for the vacation of the cash bail terms of Kshs.400,000/= given by the learned trial magistrate and

substitution with affordable terms of bond. It was counsel's contention that there should have been an alternative option of bond with surety. It was counsel's submission that the cash bail terms imposed by the learned trial magistrate were extremely high considering that the applicants were charged with the offence of obtaining by false pretences and the amount alleged was Kshs. 3 million. Counsel contended that under the provisions of the Criminal Procedure Code the applicants should have been given the alternative of bond with surety. He sought to rely on the case of **MURAGURI – vs – REPUBLIC Misc. Criminal Application No. 142 of 1989.**

Learned State Counsel, Ms Gateru, opposed the applications. It was counsel's submission that the bond terms imposed by the learned trial magistrate were reasonable. In the case cited by counsel for the applicants, the accused was not granted bail or bond like in our present case. It was also counsel's contention that the inability to meet bail terms per se is not sufficient ground for reviewing bail terms.

I have considered the applications and the submissions of counsel for both sides. I have perused the law and the case authority cited. In considering applications for bail or bond regard should be had to Section 72(5) of the Constitution which provides that a person is entitled to be released on bond with or without conditions if he is not tried within a reasonable time, except when he stands charged with an offence punishable by death. As to what amounts to reasonable time has not been defined in the statute law.

The applicants have all been granted cash bail terms of Kshs.400,000/=. They claim that the cash bail terms were harsh. Several court cases have dealt with the issue of the grant of bail or bond. The main purpose of granting bail or bond is to ensure that the accused attends trial or the proceedings. I observe that in the case of **MURAGURI – vs – REPUBLIC - High Court Miscellaneous Criminal Application No. 142 of 1989** cited by counsel for the applicants, the accused was refused bail or bond, unlike in our present case. The terms of bail or bond in a case should ensure the attendance of the accused at the trial. The seriousness of the offence has therefore to be taken into account as a might tempt an accused person to jump bail. The applicants herein were charged with an offence of obtaining Kshs. 3 million by false pretences, which is not a very serious offence, as the maximum sentence is three (3) years imprisonment. The offence is described as a misdemeanour. I am of the view that the cash bail terms imposed by the learned trial magistrate in the circumstances are harsh and I will review the same.

Consequently, I review the bail terms and order bond/bail terms as follows –

- (i) The applicants shall each execute personal bonds of Kshs.300,000/= plus one Kenyan surety each of similar amount.**
- (ii) The applicants shall deposit with the trial court any passports that they may have, to be held until the case is heard and finalized.**

It is so ordered.

Dated at Nairobi this 26th day of June, 2007.

George Dulu

Judge

In the presence of –