



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc Crim Appli 634 of 2007

VINCENT LUKOKO..... APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

What is before the Court is an application by Notice of Motion, dated 5.9.2007. The application seeks orders granting bail/bond for an accused person in CRIM. CASE NO.3644 of 2007 at the Kibera Law Courts.

This same application has already been made before the Chief Magistrate's Court at Kibera. That fact alone means that the applicant knows that the primary forum for seeking the orders now sought, is the Chief Magistrate's Court at Kibera.

I will state the trite procedural law here: an accused person may apply to the trial Court for bond/bail; and that Court has full jurisdiction to grant or refuse the same.

Has the applicant's prayer been refused by the trial Court? No. Save that the Chief Magistrate's Court needs certain *facts*, as a basis for exercising the bail/bond discretion.

I have to state trite law here: whenever a Judicial Officer is, by law, entrusted with a discretion, a primary basis for the exercise of that discretion is *factual evidence*. No discretion can be properly exercised, unless the Judicial Officer exercising it is armed with the facts that show the direction of exercise of the discretion.

It is clear from the application herein, that the Chief Magistrate's Court is now seeking the applicable *facts*, before exercising the bail/bond discretion.

The 4th prayer in the application thus reads:

“THAT the requirement by the Chief Magistrate's Court for verification by the Police of security-bond documents provided by the accused person, long after the accused person had been admitted to bond/bail and had fulfilled the bond/bail terms, be deemed unconstitutional and be declared null and void, as the

same is against the law.”

From this statement, it is clear that the Chief Magistrate’s Court is in principle not averse to the granting of bail/bond – save that the Court wants to satisfy itself that the security being held out by the accused is, in fact, *valid* security.

Whether or not the said security is genuine, is, I would hold, one of those facts material to the exercise of the trial Court’s bail/bond discretion, which the Court is entitled to know about.

This point detracts from the reference to the *Constitution* which the applicant has made rather fleetingly: that the Chief Magistrate’s Court is in breach of the applicant’s constitutional rights, because that Court is not allowing bail/bond orders to take effect *till* the Court is satisfied of certain facts.

That the trial Court is to satisfy itself first, of the said facts, before allowing bail/bond, is itself, I would hold, a *constitutional obligation* attached to judicial dispute-settlement. Therefore, the constitutional point now being urged by the applicant cannot override the trial Court’s constitutional duty.

I hold, therefore, that the application herein is premature.

I will, therefore, dismiss the application, but at the same time make orders as follows:

1. *This Ruling shall forthwith be served upon the Chief Magistrate’s Court at the Kibera Law Courts.*
2. *This matter shall be listed for mention before the Kibera Chief Magistrate’s Court on Wednesday, 7th November, 2007.*
3. *The Chief Magistrate’s Court shall ascertain the state of the security given by the applicant herein, and shall make any appropriate orders to secure compliance with the directions for ascertainment of the state of the security given by the applicant.*
4. *The Chief Magistrate’s Court, on that basis, shall dispose of the bail/bond question.*

Orders accordingly.

DATED and DELIVERED at Nairobi this 31st day of October, 2007.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Mr. Huka

For the Applicant: Mr. Mwenda

For the Respondent: Mr. Makura