

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Appli 133 of 2007

AHMED ALI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant, Ahmed Ali, was charged before the Naivasha Chief Magistrate's Court with the offence of **fraudulent false accounting contrary to Section 330** of the **Penal Code**. The value of the subject of the fraud was stated as Ksh.5,108,210/=. When the applicant was arraigned before the said court, he pleaded not guilty to the charge. The applicant applied to be released on bond pending the hearing and determination of the case. The trial magistrate released the applicant on a bond of Ksh.6,000,000/= with one surety of similar amount or in the alternative, the applicant was required to deposit cash bail of Ksh.1,000,000/=. The applicant was aggrieved by the decision of the trial court and sought to invoke the jurisdiction of this court to review the said bond terms, which in his view was draconian, punitive and excessive. This court heard the submission made by Mr. Cheche on behalf of the applicant and by Mr. Mugambi on behalf of the State.

It is now well settled that in determining whether or not to grant bail, the primary consideration by a trial court is to secure the attendance of the accused person to answer the charges brought against him. In **George Anyona & 3others vs Republic [1990] LWR 1** at page 1, Porter J, set out the principles which ought to be considered by a court when considering whether or not to allow bail. The said principles include the nature of the charge or offence and the seriousness of the punishment to be imposed if the applicant is found guilty, the strength of the prosecution's case, the character and the antecedents of the accused and the likelihood that the applicant will interfere with the prosecution's witnesses.

In the present application, the applicant was previously charged with the same offence before the Chief Magistrate's Court Nakuru before the proceedings were terminated and then transferred to the Naivasha Chief Magistrate's Court for fresh hearing. The applicant was released on cash bail of Ksh.70,000/=. He was alternatively required to post a bond of Ksh.100,000/= with a surety of similar amount. The State has not advanced any reason that would have persuaded the trial Magistrate's Court at Naivasha to impose bond terms that were different from that which was granted by the Chief Magistrate's Court at Nakuru. The prosecution did not make any suggestion that the applicant would fail not to attend court if he is released on bond. The applicant attended court when he was previously released on bond by the Chief Magistrate's Court at Nakuru.

There was no justification for the trial court at Naivasha to impose the said bond terms, which in effect condemned the applicant to remain in remand custody pending the hearing and determination of the case. The bond terms amounted to the trial court denying the applicant his constitutional right to be released on bond, especially when no compelling reasons were put forward by the prosecution for the imposition of the said bond terms. I agree with the applicant that the said terms of bond by the trial magistrate's court at Naivasha were excessive and inappropriate in the circumstances.

I allow the application as a consequence of which I will set aside the order on bail by the Chief Magistrate's Court at Naivasha. I will substitute the same with an appropriate order of this court. The applicant shall be released of bond of Ksh.200,000/= with one surety of the same amount or alternatively be shall deposit a cash bail of Ksh.100,000/=.

It is so ordered.

DATED at NAKURU this 30th day of November 2007

L. KIMARU

JUDGE