



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

**Misc Crim Appli 81 of 2006**

JOHN MAINA KAMUNYA.....  
.....APPLICANT

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

I have before me an application for bail pending the hearing of the Applicant’s case before the **Chief Magistrate’s Court Nairobi No. 254/06 and No. 262/06**. On the face of the Chamber summons application dated 16<sup>th</sup> February 2006, it was indicated that the application was grounded on an annexed affidavit of **JULYAN OYOO ORIEYO**. However, the said affidavit is not annexed to the application. Instead there is annexed an affidavit shown by the Applicant himself in which he outlines the events leading to his arrest and the various charges facing him in the two cases. The Applicant further depones that there were 10 other persons arrested together with him for similar offences of **BEING IN POOSEESION OF FIREARM WITHOUT CERTIFICATE** contrary to **Section 4(1) (a)** as read with **4(3)** of the **Firearms Act** and **TRAFFICKING IN NARCOTIC DRUGS** contrary to **Section 4(a)** of the **Narcotic Drugs & Psychotropic Substance Act**. The Applicant depones that these were given bonds but that for the same offences he was denied bond. He depones that the lower court’s decision to deny him bond was harsh, oppressive and manifestly unjust. That the prosecution did not, in the affidavit objecting to bond being granted to him in that court, satisfy the court that he would fail to present himself to the court as required. The Applicant also depones that he suffers a medical condition which required constant medical attention and that the conditions in prison are not conclusive to his welfare.

**Mr. Orieyo**, learned counsel for the Applicant argued this application on behalf of his client. He submitted that as the Applicant deponed in his affidavit, he can not abscond because his passport is held by the police. That the charges he faces are billable. That the Applicant was married with houses in Nairobi and Kitengela. That no evidence has been adduced to prove that the Appellant would abscond from attending court.

**MR. MAKURA**, learned counsel for the State opposed the Application. Since the State had not filed any affidavit, he relied on the principles applicable in determining the application of this nature. Learned counsel submitted that the primary consideration was the seriousness of the offence charged and the punishment one may face, which he said was serious. He submitted that the Applicant faced a maximum sentence of 15 years imprisonment for possession of a Firearm contrary to **Section 4(a)** of the **Firearm Act** and imprisonment for life in the second count. The second consideration **Mr. Makura** submitted, was the strength of the prosecution case and the character of the accused person.

I called for files from the lower court as indicated in the Applicant’s affidavit sworn in support of this

Application. In 262 of 2006 the Applicant was charged under **Section 61(a) (w)** of the **Penal Code**. In 254/06 he faced the two counts quoted in Mr. Makura's submission. In that latter case, the learned chief magistrate gave a lengthy and well considered ruling giving reasons why the Applicant herein was denied bail. While appreciating that the offences the Applicant face in both cases were bialable, the court declined to grant bail on grounds that the Applicant had gone underground for five months to the extent the prosecution withdrew an earlier case filed against him. The learned trial magistrate relied on the affidavit sworn by the investigating officer of the case.

I am aware that the Applicant has not come on appeal on the learned trial magistrate's ruling but has, which is his right to do, applied to be released on bail by this Court. The State was unable to file any affidavit in reply to the Applicant's one. However, since the matter in issue here is the same as one before the Chief Magistrate's Court the evidence before that court cannot be over looked. To do so would lead to lopsided justice.

I did consider the affidavit sworn by the investigating officer of the case and the learned chief magistrate's ruling. It is quite clear to me that the basis of the investigating officer's apprehension that the Applicant may not honour bond terms are sound and reasonable. Nothing new has arisen to change the Applicant's circumstances as to justify a finding by this Court that he will honour conditions and terms of bond or obey the Court requirements to attend until the case is finalized.

As of now I see no good ground to justify the court to grant bail. The matter before court is serious enough and even though others charged with the Applicant whose cases will be joined to his have been given bond, the Applicant's case is quite different. The desire to fail to honour the bond terms are real and the motivation to do so quite evident.

The Application has no merit and is dismissed.

Dated at Nairobi this 22<sup>nd</sup> day of March 2006.

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**LESIIT, J.**

**JUDGE**

Read, signed and delivered in the presence of;

Applicant - present

Mr. Makura for the State

Mr. Oyiero for Applicant

CC: Huka

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**LESIIT, J.**

**JUDGE**

Read, signed and delivered in the presence of;