



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**MISC. CRIMINAL APPLICATION 539 OF 2005.**

**DANIEL DELA AMEGA ..... APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

**DANIEL DELA AMEGA** is a Ghanaian National. He was on 8<sup>th</sup> September, 2005 arraigned in the Chief Magistrate's Court, Nairobi on three counts of stealing contrary to Section 275 of the Penal Code. He also faced three alternative counts of handling stolen property contrary to Section 322 (2) of the Penal Code, five counts of forgery contrary to Section 349 of the Penal Code, two counts of being in possession of suspected stolen property contrary to Section 323 of the Penal Code and finally one count of being in possession of implement for forgery contrary to Section 367 of the Penal Code. He pleaded not guilty to all the charges and the case was then set down for hearing on 16<sup>th</sup> November, 2005 in Court Number 4. The Applicant was thereafter granted bail in the following terms; that he deposits Kshs.1,000,000/= and provides a Kenyan surety to the tune of Kshs.2,000,000/=. The Applicant was unable to meet the aforesaid bond terms.

When the case came up for hearing, the Applicant made an Application to have the bond terms varied. In his own words he wanted the cash bail aspect of the bond removed and or reduced substantially. The Learned Magistrate having carefully listened to the Application declined to review bond terms.

The Applicant was not done. On 16<sup>th</sup> November, 2005, he renewed the Application for the reduction of the bond terms before the Chief Magistrate. The Chief Magistrate was persuaded to reduce the bond terms. He directed the release of the Applicant upon execution of a personal bond of Kshs.1,000,000/= plus one surety of similar amount. The Applicant was also ordered to deposit his passport in Court. Still the Applicant was unable to fulfill the bond terms. Once again on 9<sup>th</sup> January, 2006 he made a similar Application. However the Court this time overruled him stating that the bonds terms imposed were reasonable.

The Applicant has now moved to this Court pursuant to the provisions of Section 123 and 362 of the Criminal Procedure Code, seeking that this Court be pleased to review/vary the bail/bond terms imposed by the Chief Magistrate. The Application is supported by an affidavit sworn by the Applicant in which he basically repeats what I have already outlined above. However he emphasizes the fact that the bond terms imposed were manifestly harsh and excessive considering that he was an ordinary person of humble means.

In his oral submission in support of the Application, the Applicant stated that his wife was unable to meet the bond terms imposed. That if he was released on bond, he would not run away since his family is here in Kenya. Mrs. Gakobo, Learned State Counsel opposed the Application. She submitted that the Applicant faces several counts of stealing and forgery of International Visa Cards. That in view of the seriousness of the charges facing the Applicant, the bond terms imposed by the trial Court were reasonable and cannot be termed as harsh.

I have carefully considered the Application, the supporting Affidavit, the submissions made in support of

and in opposition to the Application. First I wish to point out that the Applicant has been less than candid in his averment in the Affidavit in support of the Application. He does not disclose that following the initial bond terms imposed when he first appeared in Court to take his plea, he had subsequently successfully made an Application for the reduction of the said bond terms. He wants this Court to believe that the bond terms imposed when he first appeared in Court have never been varied.

Under Section 123 (3) this Court has jurisdiction to direct that an accused person be admitted to bail or that the bail required by subordinate Court or Police officer be reduced. In exercising this jurisdiction the court should bear in mind that the major consideration in granting and or refusing bail is to secure the attendance of the accused at the trial. If there is merited fear that the accused person may abscond if granted bail then ordinarily the Court may refuse to admit an accused person to bail. Other considerations are of course the nature and seriousness of the offence, severity of punishment upon conviction etc.

In the instant case, the Magistrate took into account the fact that the Applicant was a Ghanaian National. He also considered the fact that the charges facing the Applicant were serious. I do not see anything wrong with the Learned Magistrate taking into account the aforesaid factors. Bail is a matter of discretion and unless it can be shown that in imposing the bail terms, the trial Magistrate took into account extraneous matters and or failed to take into account relevant matters, I do not think that it should be the province of this Court to intervene. The Applicant claims that he has a family in this country and that he had been around for 8 years. Other than this bold and bare statement in his oral submissions the Applicant did not bother to bring forth any evidence to support the contention.

I am aware that in imposing the amount of bail, the Court should have due regard to the circumstances of the case and should not be excessive. No doubt the Applicant faces serious charges some of which attract a jail term of upto 14 years. The possibility that the Applicant may be tempted to abscond cannot be gainsaid. In my view therefore, the terms of bond/bail imposed by the Learned Magistrate on 16. 11. 2005 are well deserved. They are neither harsh nor excessive as to force the hand of this Court to intervene. Accordingly the Application dated 24<sup>th</sup> October, 2003 is dismissed.

Dated at Nairobi this 16<sup>th</sup> day of March, 2006.

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**MAKHANDIA**

**JUDGE**