



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI MILIMANI LAW COURT

MISCELLANEOUS APPLICATION 27 OF 2006

PATRICK IRUNGU MAINAAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

MR. PATRICK IRUNGU MAINA. Hereinafter referred to as the Applicant was arraigned before the Chief Magistrate’s Court, Nairobi on six counts of obtaining money by false pretences contrary to Section 313 of the Penal Code. This was on 13th January, 2006. He pleaded not guilty to both counts and was granted cash bail of Kshs.150,000/=. He was unable to raise the cash bail imposed. Consequently on 16th January, 2006 the Applicant sought the variation of bond terms aforesaid on the grounds that he was unable to place the cash bail. The variation of the bail terms sought was to have as an alternative to cash bail demanded, bond and surety. The Magistrate having carefully listened to the Application declined to vary the bail terms stating thus:-

“.....On the basis of the offences and likely punishment I find the amount of bond reasonable.....”

The Applicant has now moved to this Court pursuant to the provisions of Section 123 (3) of the Criminal Procedure Code seeking that this Court do:-

“.....Review the orders of the chief Magistrate requiring that the Applicant deposits Kshs.150,000/= as cash bail and substitute it with a lesser amount and or in the alternative give a surety bond upon reasonable terms.....”

On the face of it, the Application is grounded on the fact that the Applicant has been in custody since 3rd January, 2006 when he was arrested and that his continued incarceration is detrimental to his health. That the Applicant is ready to deposit a reasonable amount of cash bail as the Court may deem fit or bond plus a surety. That though admitted to bail by the Honourable the Chief Magistrate, the amount is far too excessive and beyond the reach of the Applicant’s relatives. Finally that the offence facing the Applicant in the Lower Court is that of obtaining Kshs.98,000/= by false pretences contrary to Section 313 of the Penal Code. In his oral submissions in support of the Application, Mr. Nyaberi, Learned Counsel for the Applicant merely reiterated and expounded on the grounds aforesaid.

Miss Gateru, learned State Counsel opposed the Application. She submitted that the Applicant faced 6 counts of obtaining money by false pretences. The cash bail imposed was reasonable bearing in mind the offences and the likely punishment.

Section 123 (3) of the Criminal Procedure Code provides that:-

“.....The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate Court or Police Officer be reduced....”

This Court therefore has jurisdiction to interfere with the decision of the trial Court on matters of bail. However bearing in mind that in imposing bail terms the trial Court exercises discretion, the intervention by the High Court in those matters ought to be exercised with great care and circumspection. This exercise of discretion is not done randomly but is grounded on well formulated principles as developed by the Courts.

On matters of bail, the underlying and primary purpose or consideration is to ensure the accused's attendance at the trial. When deciding on bail Application, the Court considers the nature of the offence, gravity and severity of punishment in the event of conviction, the antecedents of the Applicant in so far as they are known, whether the Applicant has a fixed abode and finally whether he is likely to interfere with any of the Prosecution witnesses. However by section 123 (2) of the Criminal Procedure Code, the Court is obliged to fix the amount of bail with due regard to the circumstances of the case and should not be excessive.

The offence of obtaining by false pretences, attracts a penalty of three years imprisonment. The Applicant faces 6 counts in respect of the said offence. The Learned Magistrate was perfectly entitled to take into consideration that aspect of the matter. However, I do feel that to have imposed a cash bail of Kshs. 150,000/= without more was abit excessive considering that the total mount alleged to have been obtained by the Applicant was about Kshs.98,000/=. The trial Magistrate should also in my view have considered giving the Applicant as an alternative to cash bail, of bond plus surety.

Having held that the amount of cash bail imposed was excessive having regard to the circumstances of the case, I will interfere with same and reduce it to Kshs.70,000/= cash bail and in the alternative bond of Kshs.100,000/= with one surety of similar amount.

In the result I order that the Applicant may be released upon depositing in Court cash bail of Kshs.70,000/= or alternatively the Applicant shall execute a personal bond of Kshs..100,000 plus one surety of the similar amount to be approved in the normal manner.

Dated at Nairobi this 15th day of March, 2006.

.....

MAKHANDIA

JUDGE