



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Crim Misc Appli 33 of 2006

MUSA M'MUMO APPLICANT

VERSUS

REPUBLIC RESPONDENT

(Being an application for bail pending hearing and determination of

Maua Criminal Case No. 2531 of 2004)

RULING OF THE COURT

By his application dated 6.7.2006 and filed in court on the same day, the applicant seeks the following orders:-

1. That this application be certified urgent and service be dispensed with in the first instance.
2. That this honourable court be pleased to admit and release the applicant on bail pending the hearing and determination of Maua Criminal Case No. 2531 of 2004.

The application, which is expressed to be brought under sections 123 and 124 of the Criminal Procedure Code was certified urgent on 6.7.2006. The application is premised on five grounds on the face thereof, namely that:-

1. The applicant was previously out on bond.
2. The applicant has been in custody for nine months since the bond was cancelled.
3. The applicant has learnt enough lesson and is ready to abide by any conditions imposed by the court.
4. Circumstances that led to cancellation of bond by the lower court not wholly to be blamed on the applicant.
5. Applicant seriously ill in remand.

The application is also supported by the sworn affidavit dated 6.7.2006. He has deposed therein that on 28.7.2004 he was arraigned before Maua Principal Magistrate's Court in Criminal Case No. 253 (should read 2531) of 2004 in which he was charged with the offence of defilement contrary to section 141(1) of the Penal Code and that he was released on bond of Kshs. 200,000/=. The applicant also admits through the affidavit that he was involved in corrupt deals with one of the clerical judicial officers at the Maua Law Courts, which deal resulted in the release of the security deposited in court back to the applicant. He admits in the same affidavit that he was arrested on 20.7.2005 and charged with the offence of stealing

contrary to section 275 of the Penal Code. He has deposed that on 12.4.2006, the theft case against him was withdrawn. Thereafter, he has made attempts for bail but that the same have been refused by the lower court. He has deposed further that on the strength of the withdrawal of the criminal case involving the theft of the security for his bond, he is now entitled to bail pending hearing and determination of his original case.

The application is opposed on the ground that the reason given by the applicant for the withdrawal of the second criminal case against the applicant was only half the story. Mr. Oluoch for the state also contended that the applicant does not deserve the exercise of discretion of this honourable court under section 123 of the C.P.C. because first and foremost he jumped bail and secondly, he committed an offence during the time when he jumped bail. Mr. Oluoch also contended that the offence which the applicant committed when he jumped bail was serious.

Section 123 of the CPC gives this court wide discretion to grant bail to a person appearing before it except if such person is charged with murder, treason, robbery with violence and related offences. Section 124 of the C.P.C. requires that any person admitted to bail pending hearing of the case shall attend court at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the court.

In the case before me, the applicant failed to comply with the provisions of section 124 of the C.P.C. and that is what led to the cancellation of his bond.

Is the applicant entitled to bail pending hearing of his case? After considering all the circumstances of this case, I am not persuaded that I should exercise this court's discretion in favour of the applicant. It is admitted by the applicant that he jumped bail in the lower court and that during that time he committed the offence of stealing which resulted in the loss of the title deed which had been given as security for the bond granted to the appellant. It is my considered view that the applicant is unlikely to adhere to the terms of the bond if the same is granted to him, since he has already abused the discretion earlier exercised in his favour. Further, the reason giving rise to the cancellation of his bond is so weighty that this court honestly believes that this is one of those few cases in which the court must deny the applicant what plainly looks like his constitutional right.

In the result, I find that the application lacks merit. The same is accordingly dismissed. Orders accordingly.

Dated and delivered at Meru this 1st day of August 2006.

RUTH N. SITATI

J U D G E