



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Misc Criminal Appli 43 of 2005

**IN THE MATTER OF: AN APPLICATION BY MASOUD BWIKA ON BEHALF
OF OBAIDUL HAQUE & 62 OTHERS
IN THE MATTER OF: SECTION 389 OF THE CRIMINAL PROCEDURE CODE
AND THE CRIMINAL PROCEDURE (DIRECTIONS IN THE NATURE OF
HABEAS CORPUS)
IN THE MATTER OF: AN APPLICATION FOR AN ORDER OF HABEAS
CORPUS
BETWEEN**

MASOUD BWIKA APPLICANT

V E R S U S

ATTORNEY GENERAL

THE COMMISSIONER OF POLICE

PRINCIPAL IMMIGRATION OFFICER RESPONDENTS

EXPARTE

ABAIIDUL HAQUE & 62 OTHERS

**CORAM: Before Hon. Justice J. Mwera
Ndegwa for Applicant
Ms Mwaniki for state
Court clerk -Kazungu**

RULING

The sixty three (63) applicants herein are of Bangladesh nationality. They were arrested on 13th May 2005 by law enforcement agents (the respondents) in Nyali – Mombasa. They are still in custody. They brought a *habeas corpus* application dated 22nd May 2005 under the relevant provisions of law but in essence, claiming that no charges have been preferred against them yet they continue in attention. That that breached their fundamental rights. The application is yet to be heard.

But after the Hon. Attorney General had been served (for the respondents) he asked this court to grant him ten (10) days to finish investigations going on to establish whether the applicants, said to be seamen, have committed any offence or not. That the investigations are at an advanced stage to check the applicants' finger prints against their passports and seamen's books. It was even hinted that the extension of their visas since arrival could be a basis of an investigation.

The Learned State Counsel told the court that ten (10) days of continued police detention of the applicants be ordered on account of finishing the investigation or the applicants be given their liberty on bail terms that should include a Kenyan surety and daily reporting to the police. That such terms should ensure that the applicants do not abscond.

Mr. Ndegwa posited that his clients' rights had already been breached when they were not produced in court for charges within 24 hours of their arrest or as soon as it was practicable. That the time since the arrest were made, was sufficient for the police to do what they now claim to want to do in ten more days. That if bail be the course this court is inclined to follow the terms should not include a Kenyan surety because the applicants are foreigners, they are in custody and therefore cannot afford that.

That cash bail should be considered along with retaining of their documents until this matter is over. That otherwise the applicants are properly here awaiting the arrival of 2 ships so that they board them on or before 7th June 2005 to go on duty at sea. On this latter point, the State had claimed that the schedule of ship arrivals at Kilindini Harbour did not show that the two ships: "MV POLIYAMA" and "MV SPIRIT" were expected. And that all in all state security demanded that the applicants' presence in Kenya be well checked first.

This court is satisfied that the applicants since their arrest have not been charged with any offence and that the Constitution requires that once arrested a person be produced in court for charges within a specified time or as soon as it is practicable OR he be given back his liberty. It is also noted that for what the State describes as the interest of security, it be given ten more days to conclude the investigations in the circumstances surrounding the applicants' presence in Kenya.

To this, the applicants charge that there has already been enough time to do that. Having all the foregoing in view, and mindful that this is an interlocutory stage in the substantive application, this court without more, rules that each applicant be released on his own bond of Kshs. 500,000/- with one Kenyan surety of a similar amount. The applicants' documents to remain with the police where they will report every Monday and Friday until their matter is done with. On those terms the applicants secure their liberty. Orders accordingly.

Delivered on 25th May 2005.

J. W. MWERA

JUDGE