

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION**

MISC CRIMI APPLI 211 OF 2002

(from original conviction and sentence in Criminal Case No. 670 of 2005 of the Chief Magistrate's Court at Nairobi)

MAVID MAZE..... APPEALLANT

VERSUS

REPUBLICRESPONDENT

RULING

By a Chamber summons Application dated 22nd April, 2005 and filed in Court on the same day, the Applicant seeks that:-

1. He be granted bond/bail pending the hearing of his Appeal.
2. If the Court is unable to grant bond/bail, the Appeal be heard instead.

The Application was supported by the Affidavit of the Applicant. He deponed that he was charged with 1 count under the Immigration Act to wit:-

1. Knowingly possessing and using a forged written authority contrary to Section 13 (d) of the Immigration Act.
2. Knowingly possessing and using a passport with forged entry contrary to Section 13 (1) (d) of the Immigration Act. 3. Being unlawfully in Kenya contrary to Section 13 (1) (d) Immigration Act.
4. Failure to re[ort to Kenya contrary to Section 13 (1) (d) of the Immigration Act.

That he pleaded guilty to all the charges and was sentenced to serve 4 months one each count without an option of a fine. That he was now requesting this Court to give him an option of a fine. That he is newly married with a sibling, and he is a sole breadwinner thus custodial penalty if not reviewed the consequence may ruin his future life. That he fell prey of mischievous and bad friends who misled him to break the laws thus committing the offences. That he was whole heartedly remorseful, repentant and promised never to repeat such mistake.

In his oral submissions in support of the Application, the Applicant submitted that he wanted to be released on bond pending the hearing and determination of the Appeal he has already filed. He was jailed for 4 months on each count about 2 months ago. Miss Okumu., Learned State Counsel opposed the Application and submitted that he Applicant had filed a similar Application which was heard by Justice Mutungi and rejected. The Learned Judge then ordered that the Applicant's Appeal be set down for hearing on priority basis as the sentence was short. The Applicant has not shown that the circumstances have changed since the aforesaid order was made. She further submitted that eh sentence imposed was harsh as the act gives the Magistrate the option to impose a fine or jail term. In any event the Applicant pleaded guilty.

I have perused the proceedings before Justice Mutungi on 27th April, 2005 and I am bound to agree with the Learned State Counsel that indeed the Applicant filed and argued a similar Application as

the instant one before Justice Mutungi who after full hearing and considering the same dismissed it. The Judge then ordered that the Appeal be heard on priority basis to avoid prejudice to the Applicant given the short term imposed.

Instead of the Applicant pursuing the Appeal as directed he has opted to file the instant Application which is on all fours with the Application which was heard and determined before Justice Mutungi. The Applicant has not stated that the circumstances than obtaining when he presented the Application before Mutungi J have since changed to warrant this Court revisiting the issue again. This is the consideration in Applications of this nature that being the case. I hold that the Application is unmerited and is consequently dismissed.

I wish however to reiterate the order made by Justice Mutungi that Appeal number 186 of 2005 filed by the Applicant on 18th April, 2005 be set down for hearing on priority basis by the registry. As the proceedings are ready and available, I have in the course of writing this ruling admitted the Appeal for hearing.

Orders accordingly

Dated at Nairobi this 14th day of July 2005.

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M. S. A. MAKHANDIA

JUDGE