



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

Misc Crimi Appli 576 of 2005

(Variation of Bond pending Appeal in Criminal Case No. 2339 of 2005 of the Chief Magistrate’s Court at Nairobi

DAVID WANJOHI MAINA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

The Applicant has by Chamber Summons dated 18th November 2005 sought an order of this Court varying the bond terms in **Criminal Case No. 2339 of 2005**. Mr. Kangahi, who argued the Application on behalf of the Applicant submitted that the Applicant had been given bond of Kshs.300,000/- cash bail in **CMCC No. 3325 of 2005**. That Applicant has been unable to raise the cash bail. That subsequent to filing the Application, the Applicant made a similar application before the lower court which was denied. Counsel submitted that the Applicant was a man of humble means.

MR. MAKURA, learned counsel for the State opposed the Application. He submitted that the amount of bail given should have regard to the circumstances of the case. Counsel submitted that the amount involved was 1.3 million and therefore the bond terms granted by the Court were reasonable.

I have considered the Application and have also called for Chief Magistrate’s **Criminal Case No. 2333 of 2005** and **Criminal Case No. 2312 of 2005**. The former case was consolidated with the latter one.

I see that in these cases the Applicant was granted bond of Kshs.300,000/- cash bail or in lieu of same be remanded in custody.

The Applicant is charged with 3 others with similar charges so that the 1.3 million involved in the case also involved 3 other persons. The amount of Kshs.300,000/- is quite substantive. I do not think that to order a cash deposit of such an amount, having regard to the charges before the court, that the same is reasonable. The court by granting bail was of the view that the Applicant deserved to be released if he met the requisite terms. In the circumstances the terms set by the Court are excessive and goals set too high.

I will allow this Application by varying the bond terms as follows: Applicant may be released on bond of Kshs.300,000/- with one surety of same amount to be examined by the trial court.

It is so ordered.

Dated at Nairobi this 23rd day December 2005.

LESIT, J.

JUDGE

Read, signed and delivered in the presence of;

Applicant

Mr. Kangahi for the Applicant

for state

Court clerk: Erick

LESIT, J.

JUDGE