



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPLICATION NO. 419 OF 2001

GEORGE ONGU'UDI MADIANYAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant moved the court for orders that the bond into which he has been admitted be reduced and that one Mr. Washington Erastus Kwaka Omolo be approved as surety for the applicant.

The first prayer must fail for the reason that the applicant is charged jointly with others and the terms of their release are the same. The foregoing notwithstanding however, the record of the lower court presented before me is disturbing.

The learned trial magistrate first released the accused on a bond of Kshs. 1,000,000/- (One Million) There was no order for a surety. A few days thereafter, at the instance of the prosecutor, the amount of bond was enhanced to Kshs. 4million.(The prosecutor had asked for Kshs. 10Million). The Magistrate then said the sureties remain the same viz one surety each.” Further the passports of the accused were to be deposited in court.

Unless the certified proceedings before me are wrong, in the earlier order for bond of Shs. One Million, there was no provision for sureties or deposit of passports.

Be that as it may, the applicant presented two sureties to secure his release. Each presented documents of ownership of some property in Nairobi together with valuation reports.

The first surety was One James Odipo Oduol. He owns property known as Nairobi/Block 62/261 situated at Ayany Estate in Nairobi. It had been valued at Kshs. 4,500,000/-.

The learned trial magistrate remarked in his record that:

“This Court has reason to believe the value given to the property in question situated at Ayany estate which is given as 4,500,000/- is grossly re-exaggerated and that the property may not even fetch 1/3 of the value given. The company seal is also not legible. For these reasons the court is unable to approve the surety.”

The other surety was one Washington Erastus Kwaka Omolo. He owns a house at Buruburu Nairobi this being Title No. Nairobi/Block 79/273. He presented a valuation report thereof. The value was placed at Kshs 4 million. He added that the applicant was a member of his church.

The learned trial magistrate’ record reads as follows:

ORDER

I have considered the valuation report.

The considered view of the court is that,
the value of his property is exaggerated.

The surety is therefore rejected.”

The applicant then moved to this court seeking the orders set out. The basic consideration in setting the terms of bail is whether or not the accused shall turn up to stand trial. The terms should not be prohibitive or oppressive. When the prosecutor in the instant case applied to enhance the bond he did not allege that the applicant or his co-accused were unlikely to turn up for their trial.

What is most unfortunate however is that, the trial magistrate did not deem it fit to summon the valuers who authored the reports to answer any questions as to the value of the said properties. The learned trial magistrate instead turned himself into a valuer and concluded that the values of the said properties were exaggerated. With respect, that was a misdirection.

As a result of the rejection of the sureties, the applicant’s freedom has been compromised yet no risk has been shown that he may abscond.

In the absence of any report to the contrary, the report by one Washington Erastus Kwake Omolo must be accepted.

Accordingly, I direct that the learned trial magistrate approves the said surety and ensure that the applicant is released without any further delay. Order accordingly.

Dated and delivered at Nairobi this 28th day of June, 2001

A. MBOGHOLI MSAGHA

JUDGE