



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPLICATION 322 OF 2000
THOMAS KADA DALU.....APPLICANT
Versus
REPUBLIC.....RESPONDENT
CONSOLIDATED WITH CRIMINAL APPLICATION 377 OF 2000
RAPHAEL MUSEMBI NDUNDA.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

PROCEEDINGS

8-8-2000:

Appellant present on Production order

Miss Shiundu, State Counsel

Court:

The State counsel needs more time. Hearing on 22-8-2000 production order extended till then.

V.V. PATEL

JUDGE

22-8-2000:

Appellant present

Miss Shiundu, State counsel

Court:

Hearing on 5-9-2000. Production order extended till then.

V.V. PATEL

JUDGE

5-9-2000:

Both appellants, i.e Thomas Kadia and Raphael Musembi are present on Production orders.

Miss Shiundu, State counsel for Respondent

Court:

Both Applications. Nos 322 and 377 of 2000 are consolidated. 1st Appellant: (Thomas) Pray reduce the bail conditions. I am a Police Officer with Kenya Police since last 14 years. I am married with two children. I am from Kwale District where my family lives. I am a Police Surgeant in Mombasa. 2nd Appellant - Raphael -

I apply for reductions of the conditions for bond. I have been in Kenya Police force since last 22 years. I am married with 8 children. My family lives in Makueni District. My present rank as a Police Officer is Police Corporal and posted in Mombasa. I was arrested on 18/3/2000 and have been in custody since then. This case is fixed for hearing from 2nd to 6th October, 2000. Miss Shiundu, State Counsel The hearing dates are in October, 2000. I leave it to court.

V.V. PATEL

JUDGE

5/9/2000

RULING

Criminal Applications Nos 322 and 377 of 2000 are consolidated.

Both appellants have urged this court for reduction of the conditions imposed by the learned Chief Magistrate for their release on bond pending the trial in the Magistrate's court.

The appellants are jointly charged with others for trafficking in a narcotic drug, viz 4,715kgs and 1540 slabs of Hashish on 26/1/2000. In all there are 9 accused in the court below. It is said time and again that any onus is presumed to be innocent until proved guilty. Before an accused is released on bond the court has to be satisfied that the accused is not likely to abscond and will present himself to court whenever required to do so. Further that he is not likely to interfere with any of the witnesses. The court may impose conditions but they must be reasonable ones.

An accused must be given a fair and impartial trial within a reasonable time. The learned Magistrate ordered in the present case that each of the appellants be released on his own bond of Shs.10 million with two sureties each in the like sum.

I have carefully considered the applications. The appellants are indigenous Kenyans from Kwale and Makueni District respectively.

The 1st appellant has been employed as a police officer since last 14 years while the 2nd one is also in the Kenya Police force since last 22 years. Their present ranks are Police Sergeant and Police Corporal

respectively.

Both appellants are married with children all of whom are living in Kenya.

Both appellants were arrested on 18/3/2000 in Mombasa and have been in remand since then. The hearing of the case is fixed from 2nd October till 6th October, 2000. By now they have been in remand since last over five months. The investigations in the case, I presume, must have been concluded long ago.

I rule that the conditions imposed are unreasonable and must be varied.

I order that each of the two appellants, be released on his own bond of half million shillings plus two sureties for each in the said amount pending the trial.

V.V. PATEL

JUDGE

5-9-2000