



**Alibhai v Republic (Miscellaneous Criminal Application
E065 of 2023) [2023] KEHC 19509 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19509 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E065 OF 2023**

**A. ONG'INJO, J
JUNE 22, 2023**

BETWEEN

ASIF AMIRALI JETHA ALIBHAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant's appeal against conviction and sentence in Shanzu Magistrate's Court Cr. Case No. 595 of 2019 was successful partially. His conviction for the offence of engaging in business without work permit contrary to Section 53 (1)(m) as read with Section 53 (2) of the Kenyan Citizenship & Immigration Act 2011 and the offence of unlawfully employing foreign nationals contrary to Section 45 (1)(a) as read with Section 60 of the Kenyan Citizenship & Immigration Act 2011 were upheld and the court found that the Appellant not being a Kenyan and not having a work permit engaged the Nepalese Nationals illegally as dancers in his illegal business premises.
2. The Applicant approached this court by a notice of motion dated 8th May 2023 seeking to be released on bail or for an order to be taken to court promptly to answer to whatever charges that the Respondent may prefer against him. He also sought that notwithstanding any of the foregoing prayers, the court should admit him to anticipatory bail pending his production in court. The Applicant also sought for costs of the application. The application was supported by grounds on the face of the application and the affidavit sworn by Chacha A. Mwita Advocate.
3. From the proceedings of 10th May 2023, it was revealed that the Applicant fell ill on 6th May 2023 and he was admitted to Mombasa Hospital where he was being treated up to 16th May 2023 when the matter came up for mention. On 19th May 2023, a replying affidavit by the 2nd Respondent was filed annexing declarations by the Cabinet Secretary Ministry of Interior and National Administration dated 16th November 2022 pursuant to Sections 33 (1) and 43 of the Kenyan Citizenship & Immigration Act 2011 requiring the applicant to remain in police or prison custody while arrangement for removal



are being undertaken for reasons that he was not a Kenyan and his presence in Kenya was contrary to national interests and therefore a member of the prohibited class and prohibited immigrant.

4. Upon the Applicant's advocate learning of the declarations by the Cabinet Secretary Ministry of Interior and National Administration, he sought for leave to amend his pleadings and that they were not served with the said orders.
5. Having considered the application and the oral submissions by the Respondent's and Applicant's advocate, it is clear that the orders sought by the applicant have been overtaken by events as he has been produced in court and reason for his detention disclosed that he has been declared a member of the prohibited class and prohibited immigrant and he is in custody for purposes of removal from Kenya being undertaken.
6. This court finds that the orders sought cannot be granted. The application is dismissed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 22ND DAY OF JUNE 2023**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for Respondent

Mr. Chacha Advocate for the Applicant

No appearance for Applicant

HON. LADY JUSTICE A. ONG'INJO

JUDGE

Mr. Chacha Advocate: We had filed JR E012 of 2023 but it was overtaken by events as my wife passed on.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

22.6.2023

