



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISC. CRIMINAL APPLICATION NO.E379 OF 2021

ANTOINETTE UWINEZA.....APPLICANT

VERSUS

REPUBLIC..... PROSECUTOR

RULING

1. The Applicant, **ANTOINETTE UWINEZA** has moved this court vide a **Notice of Motion** application dated **15th October, 2021** seeking for orders that:-

a) The Honourable Court vacates and or sets aside the orders that had been issued by the Honourable Justice Korir on 16th February, 2016 barring the Applicant from leaving the country on conditions attaching to the bail/bond terms.

b) The Honourable court be pleased to issue orders directing all relevant authorities including but not limited to the Immigration Department that the Applicant is at liberty to travel out of the jurisdiction of this Honourable Court.

2. The application is based on the grounds on the face of the application and **Supporting Affidavit** sworn by the Applicant on **15th October, 2021**. It has been deponed therein that the Applicant who had been charged with the offence of **Murder contrary to Section 203 of the Penal Code**, was released on bail with one of the conditions being that she was restrained from leaving the jurisdiction of the Honourable court. She was tried, convicted and sentenced to death for the said offence. Dissatisfied with the conviction and sentence, the Applicant appealed to the Court of Appeal. The appeal was allowed whereby the conviction and sentence were quashed and set aside. It is also deposed that the Applicant, having gone back to her ordinary life, plans to travel back to her home country but on going to process the documents, she was informed that she had been blacklisted by the Immigration Department. It is the Applicant's contention that her position and situation having been changed by the decision of the Court of Appeal on **25th September, 2010**, the bail conditions issued on **19th February, 2016** do not apply to her current conditions. She thus prays for orders to issue setting aside the bail orders issued by Korir J. and another order directing the Immigration Department to remove her name from their blacklist.

3. In response, **M/S Akunja**, counsel for the State, orally submitted and confirmed that there was indeed an order barring the Applicant from leaving Kenya pending the conclusion of the trial before the High Court. However, she submitted that the Applicant has not exhibited the existence of an order which is still barring her from leaving the country. She stated that they cannot act on assertions without evidence. She urged that the Applicant demonstrates the existence of a red alert against her.

4. Having listened to both counsel in their submissions with regard to the prayers the Applicant is seeking in her application, I have had to call for and peruse the proceedings in the **High Court Criminal Case No.45 of 2013** and **Court of Appeal Criminal Case No.84 of 2019**.

5. From these proceedings, it is confirmed that the Applicant was charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. In the course of the trial, the accused person applied to be released on bond/bail vide a **Notice of Motion** application and Honourable Justice Korir R. allowed the same. She ordered that the Applicant be released on bond on the following terms:-

a) She deposits a cash bail of Kshs.1,000,000/=.

b) Provide three (3) sureties of similar amount.

c) Provides physical address of the intended residence in Kenya upon release.

d) The Applicant should not leave the jurisdiction of the court until the case is concluded.

6. And specifically, at Paragraph 7 of her uling on the bail/bond application by applicant, Honourable Justice Korir issued an order directing the Permanent Secretary responsible for Immigration, that the Applicant, **ANTOINETTE UWINEZA** should be barred from leaving Kenya until her ongoing trial is concluded. The Honourable Judge further directed that the order be circulated to all entry/exit points. The trial before the High Court proceeded and at the conclusion of it, the Applicant was found guilty, convicted and sentenced to serve a life imprisonment for the offence of Murder on **1st November, 2018**. The Appellant, dissatisfied with her conviction and sentence, appealed vide **Criminal Appeal Case No.89 of 2019**. On **25th September, 2020** her appeal was allowed, conviction quashed, and sentence of life imprisonment set aside. The Court of Appeal then went on to declare that the Applicant be set free unless otherwise lawfully held.

7. From the foregoing, it is clear that the applicant has by all standards of this country's justice system been cleared of any criminal liability in respect of the Murder of the deceased **WINNIE UWEMBAYA CULPITS** on **18th February, 2013**. And unless there is any lawful reason and or justification, the orders issued by Hon. Justice Korir, R. on **10th February, 2016** and condition attached thereto lapsed or ceased on **18th November, 2018** when the trial before the High court concluded with a Judgment convicting and sentencing the Applicant.

8. In the circumstances, the application by the Applicant is hereby found meritable and the same allowed with the following orders:-

(a) The cash bail deposited by the Applicant be released to the Applicant in the event it is yet to.

(b) The three sureties be and are hereby discharged, if at all they have not.

(c) The order barring the Applicant from leaving this country's (Kenya) jurisdiction be and is hereby lifted/vacated.

(d) The Applicant be and is hereby at liberty to leave Kenya.

(e) The order to be served upon the Principal Secretary of the Immigration Department, the Incharge of Immigration Department, the Director General of the Immigration and all the concerned persons, for circulation to all exit points..

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED THIS16TH DAY OFNOVEMBER....., 2021.

D. O. CHEPKWONY

JUDGE