



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

HCCR. REV. NO. E160 OF 2021

JAMES KIBET CHIRCHIR....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

R U L I N G

1. The application dated 16th of September, 2021 was brought pursuant to Articles 48, 49 and 50 of the Constitution of Kenya, 2010 seeking:-

- i. That the proceedings in Shanzu CMC Criminal Case No. 969 of 2021 be removed and brought to the High Court for purposes of ascertaining the legality, correctness and/or propriety of the proceedings and ruling of the lower court.
- ii. The court exercises its discretion in revision of the ruling on bail and bond by the lower court wherein the Magistrate granted unreasonable bail and bond terms.
- iii. The court be pleased to set aside the bail and bond orders made and admit the Applicant to bail or bond on reasonable terms.
- iv. Costs of the application be provided for.

2. The application is supported by the affidavit of James Kiber Chirchir and the grounds on the face of the application which are to the effect that the bail and bond terms that were set by the court are not reasonable and the trial Magistrate failed to consider submissions by the counsel that the Applicant has a Constitutional right to be released on bail or bond on reasonable terms.

3. The Applicant averred that the court failed to take into cognizance the presumption of innocence and that bail ought not to be used as a punishment. It is further averred that if this court does not intervene, the Applicant stands to suffer further violation of his Constitutional rights and will continue to languish in custody having been condemned to bail terms that are unreasonable.

4. The Respondents were served with the applications on 18th of October, 2021 and they were given 7 days to file their affidavit and concurrently with written submissions and a date for ruling set on 11th of November, 2021. The Applicant was also instructed to file his submission within the same period.

5. As at the time of writing this ruling, the Respondent had not filed a Replying Affidavit or written submissions, neither had the Applicant filed his written submissions. As it stands, the application is not opposed but equally the Applicant has not filed written submissions to tell this court what illegality, error or impropriety is in the proceedings and ruling of the lower court to warrant an order for revision.

6. The orders of the trial Magistrate granting bond were an exercise of discretion and can only lie for review through the filing of a miscellaneous application or appeal.

7. The application herein does not have merit and the same is dismissed.

8. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 11TH DAY OF NOVEMBER, 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel- Court Assistant

Applicant - Present in person

Mr. Okach for Applicant's Advocate

Ms. Kambaga for Respondent's Advocate

Hon. Lady Justice Anne Ong'injo

Judge

MR. OKATCH

I wish to apply to review. We relied on our affidavit which was extensive.

Hon. Lady Justice Anne Ong'injo

Judge