



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAROK

MISC. CRIMINAL APPLICATION NO 25 AND 26 OF 2019

JOHN KIMANI.....1ST APPLICANT

DAVID JAMBAJI.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being a review application arising from the ruling of this court (Hon. Mr Justice J M Bwonwong'a) delivered on 8th October 2018 in Narok High Court in Misc Criminal Application No 86 of 2018, Peter Mutuku Kiioo & 5 others)

RULING

INTRODUCTION

1. The two applicants have sought review of the ruling of this court dated 8th October 2018, which denied them bail pending the hearing and determination of their trial on charges of conspiracy to commit a felony contrary to section 393 of the Penal Code (Cap 63) Laws of Kenya and other related charges as set out in the charge sheet signed by the OCS Narok Police Station and countersigned and approved by the Office of the DPP at Narok on 29th October 2018. The applicants were denied bail on the basis that they were a flight risk.
2. On 4th December 2019 the two applications were consolidated.
3. It therefore follows that each application will be considered separately.

The application of the first applicant- John Kimani.

4. This applicant has deponed to a 20 paragraphs supporting further affidavit. In that affidavit he has averred to the following major matters. First, the affidavit of the investigating officer (IP Michael Lemayian) does not disclose evidence amounting to a compelling reason to deny him bail. He also has averred that IP Michael Lemayian was not cross examined. Furthermore, the applicant has deposed that this is a new application. The other matters are in the nature of arguments to warrant this court to review its ruling dated 8th October 2018, which I find unnecessary to set out.
5. The only new matter that the applicant has brought to the attention of the court is a medical report from Narok County Referral Hospital dated 7th January 2020. In that report Dr. Liouis Quin of that hospital has diagnosed hypertension as the ailing from which the applicant is suffering from. The doctor has recommended the need for the applicant to be attended to by a cardiologist.
6. In his oral submissions in this court the applicant submitted that he has a cardiologist based in Nairobi, who will be treating him. This is a new matter that warrants this court to review its earlier ruling.
7. Ms. Nyaraita for the respondent has conceded the application on the said medical grounds.
8. After reviewing my earlier ruling I find that this is a new development that warrants the release of the first applicant on bail pending his trial.
9. The first applicant is hereby released on bail of shillings one million and five hundred (Shs 1, 500, 000/=) and one surety of a similar amount to be approved by the Deputy Registrar of this court.

The application of the second applicant- David Jambaji.

10. This applicant has relied on his further 20 paragraphs supporting affidavit in his review application. The applicant has averred to the following major matters. He has deposed that the evidence of IP Lemayian, the investigating officer was not truthful. In this regard this applicant relied on the sworn oral evidence of the deputy OCS (IP Ephantus Mwangi), Narok Police station, who also produced the cells register and the OB entry No. 22 of 17/08/2018 of that police station. The evidence of the deputy OCS according to that OB entry, does not show the activity of any remandee. He also averred that he did not know whether the OB was used by the investigating officer. He further deposed that the name of this applicant does not appear as one of those who attempted to escape. He finally averred that there is no indication whether any investigations were done into the issue of attempted escape. It was the evidence of the deputy OCS that the grills that were alleged to be attempted to be cut were in the corridor. And that the remaindees are put in their cells at night.

11. Based on the OB and cells register entries, the applicant urged the court not to believe the OB entry. He therefore urged the court to review its ruling and release him on bail.

12. I find that this evidence is not new evidence. Furthermore, the applicant should have applied to cross examine IP Lemayian on his affidavit.

13. In the premises, I find that the applicant has not placed before the court new evidence that will warrant this court to review its ruling with the result that his fails and is hereby dismissed.

Ruling signed, dated and delivered in open court at Narok this 3rd day of February, 2020 in the presence of both applicants and Ms. Torosi for Respondent.

J. M. Bwonwong'a

Judge

3/2/2020