



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CRIMINAL REVISION NO. 508 OF 2020

LESIT, J

ISAAC NDIRANGU MACHARIAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The application before the court is the **Chamber Summons** dated 30th April, 2020. It seeks five prayers as follows:

a) This matter be certified as urgent and service thereof be dispensed with in the first instance.

b) The Honourable Court be pleased to call for the records/proceedings in the Makadara Chief Magistrates Court at Nairobi Criminal Miscellaneous Application No. 350 of 2020. Republic – versus – Isaac Ndirangu Macharia.

c) The Honourable Court be pleased to review/quash and/or set aside the Order by the Subordinate court on 29th April, 2020 in the Makadara Chief Magistrates Court at Nairobi Criminal Miscellaneous Application No. 350 of 2020/ Republic –versus- Isaac Ndirangu Macharia granting a custodial Order for the Applicant herein to be detained at Pangani Police Station for 10 days so as to enable no. 86665 P. Ezekiel Kaberia or any other officer attached to Directorate of criminal investigations to complete investigation in regard to a case of conspiracy to commit a felony contrary to section 317 of the Penal Code.

d) This Honourable Court be pleased to release the Applicant on reasonable bail and bond terms pending the conclusion of the said investigations.

e) Costs of and incidental to this application be borne by the Respondent.

2. The application is supported by seven grounds on the face of the application. In brief it sets out date of Applicant's arrest as being 27th April, 2020 for the offence of conspiracy to commit a felony contrary to **section 317 of Penal Code**. He has been in custody at Pangani Police Station following a 10 days' detention order granted by the Makadara Court vide Makadara Chief Magistrate's Criminal Miscellaneous Application No. 350 of 2020.

3. It is contended that the Magistrate's order is harsh and unreasonable and further that holding the Applicant for over 24 hours is unconstitutional.

4. The application was argued by Mr. Minishi Advocate on behalf of the Applicant. In his submissions he urged that the Applicant was seeking a review of the lower courts order granting the Respondent 10 days to hold the Applicant and the further order releasing the Applicant on a cash bail of KSh.500,000/=. Counsel urged that the matter is coming up for a mention before Makadara Chief Magistrate's court on 14th, four days from today.

5. Mr. Minishi urged that the Applicant was unable to post the KShs.500,000/= cash bail ordered due to the harsh economic times and also due to the prevailing Covid-19 pandemic. Counsel urged that the Applicant was both diabetic and hypertensive and his continued detention poses a serious risk to his health. He said he required urgent medical attention which would be risky to provide to him while in custody.

6. Miss Kibathi, Learned Prosecution Counsel opposed the application basically on four grounds. First Counsel urged that the Applicant has been uncooperative to the investigating team of Sgt. Evans Gitonga and PC Ezekiel Kaberia. Secondly that since the Applicant had 2

identity cards the investigators did not know who he is. Thirdly that the case is complex and required reports from both NTSA and National Registration Bureau which are yet to be received.

7. Ms Kibathi urged that police were also trying to trace other suspects who were involved in the matter under investigation including staff from NTSA and argued that releasing him may jeopardize the entire investigations.

8. I have considered the application before me and the submissions by both Mr. Minishi and Ms. Kibathi.

9. The lower court file was not availed to this court for consideration of this application. However, both counsels have brought the court to speed. The court is now aware that the Applicant was presented before the Makadara Chief Magistrate's Criminal Court by the State seeking orders allowing the State to hold him for 14 days pending investigations. The court has been notified that the Chief Magistrate's Court made 2 orders:

a) Granting the State permission to hold the Applicant for 10 days not the 14 days sought.

b) Granting the Applicant release on a cash bail of Kshs.500,000/=.

10. The order of detention and by extension the cash bail will be coming up again before Makadara Court on 14th May.

11. What is before the court is an application

(i) To call for the lower court file;

(ii) Review, quash or set aside the order of the Magistrate's Court for the Applicant's detention for 10 days

(iii) Release the Applicant on reasonable bail and bond terms

(iv) For costs.

12. The Applicant already has an order of a cash bail which, if he was able to post, he should have benefited from. The argument that he should not be released and that such release may jeopardize investigations is therefore not a matter for consideration before this court as the option to be released subject to posting bail is on record and has not been challenged by the State before this court.

13. What is therefore before court is whether the bond terms granted by the Magistrate's Court were harsh and unreasonable as urged in the face of the application.

14. It is clear that the Applicant was granted cash bail and His terms are on record. The Applicant is urging the court to review the same downwards and has provided a figure of KShs.100,000/=.

15. Is the cash bail ordered harsh and unreasonable? That can be answered by paying attention to the nature of the case the Applicant is likely to face and his personal circumstances. From the submissions made before court, investigations being carried out touch on fake vehicle registration documents, sale of a vehicle on basis of faked documents and sums of money taken as a loan by the person who allegedly bought the vehicle on basis of faked documents.

16. From the above, it is clear that the investigations involve a multiplicity of both acts and personalities. Amounts involved are not quoted. However, is clear it is a web of transactions where money must have been involved.

17. The Applicant has medical conditions which I have considered. He is under investigations and has not been charged as yet, a fact I have also considered.

18. The Applicant is entitled to release on reasonable bond terms. He has been given bond. The terms given are KShs.500,000/= cash bail. Having considered the nature of the investigations being carried out, the Applicant's medical conditions and all the relevant circumstances including the Covid-19 dilemma, I am satisfied that the bond terms granted to the Applicant are reasonable and fair.

19. The application is accordingly dismissed with no order as to costs.

DATED AT NAIROBI THIS 11TH DAY OF MAY, 2020.

LESIT, J

JUDGE.