



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION CASE NO. 543 OF 2020

IBRAHIM ABDI HUSSEIN.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

The applicant herein **IBRAHIM ABDI HUSSEIN**, filed the present application on 13.7.2020. The application is brought under several constitutional provisions, including articles 22, 23, 49, 50(2)(a), 165(3)(a), 165(6 and 7) and also sections 362 and 364 of the Criminal Procedure code. It basically seeks that the ruling of the Hon. Zainab Abdul, Senior Resident Magistrate, in Milimani Criminal Case Number 1805/2020, Republic Versus Humphrey Minyata Muhambe & 2 others delivered on 8.7.2020 denying the 3rd accused bail be revised and or set aside. The application further seeks that the applicant be admitted to bail. The same has been opposed by the state.

At the hearing of this application on 18.9.2020, Mr. Juruba for the applicant only submitted that bail is a constitutional right to be denied only upon proof of existence of compelling reasons. That in this case, there are no compelling reasons since the affidavit that the prosecution relied on in opposing bail before the lower court had been commissioned as so could not prove any compelling reason.

In opposing this application, Ms. Nyauncho for the state submitted that the state relies on the affidavit of the investigating officer filed before the trial court, on which the original objection was based. That the said affidavit raised compelling reasons that the accused is likely to interfere with witnesses if released on bail. He is also likely to abscond. And that in additional, the accused remains a security threats as the weapon used in the commission of the crime (pistol) has never been recovered.

Lastly that the commissioning of the affidavit or lack of it, is a technicality which should not prejudice the case, and that the lower court had duly considered the affidavit of the investigating officer.

I have considered the submissions of both counsel for the applicant and the state. This application is basically for revision of the lower court's orders of 8.7.2020. It is brought under section 362 of the Criminal Procedure Code, Cap 75. The same reads;

“The High Court may call for and examine the record of any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

I have considered the proceedings attached of the lower court. It is clear that the trial magistrate put reliance on the affidavit of the investigating officers, the same affidavit that the state has relied on in opposing this application. That the said affidavit was not commissioned as required by the law. I have perused the said affidavit as attached to the present application. It is true the copy attached has not been commissioned. However, on the same file there is the same affidavit filed on the same date of 3.7.2020. The same is clearly commissioned on the same date by the chief magistrate. The chief magistrate's stamp is engrossed on the same.

This means that the submissions made on behalf of the applicant were not entirely sound or based on the correct facts. The learned trial magistrate was in my view correct to make the ruling based on this affidavit.

I have perused the considered ruling aggrieved of. It is reasoned to the extent of considering the objections as raised by the prosecution. A final finding denying the accused bond was accordingly made. The applicant in this application for revision, has not shown any error, illegality or impropriety in the ordered of the trial magistrate.

The prosecution has relied on the same grounds in opposing this application. That is;

- That accused is likely to interfere with the witnesses if released on bail.
- That he is likely to abscond.
- That in the interest of public security accused ought to be remanded in custody.

The trial court considered all these grounds in its ruling. There has been no change of circumstances in this matter that could mitigate in favour of the accused being

granted bail. I am convinced that the prosecution has proved the existence of compelling reasons as to justify the denial of the right to bail to the accused. I sincerely do not find any merit in this application dated 10.7.2020. Same is dismissed. The applicant, accused to be remanded in custody pending trial as ordered by the trial court on 8.7.2020. Orders accordingly.

HON. JUSTICE D. OGEMBO OGOLA

2ND OCTOBER 2020

Court:

Ruling read out in open court in presence of Mr. Isae for Juruba for accused and Mr. Mutuma for the state.

HON. JUSTICE D. OGEMBO OGOLA

2ND OCTOBER 2020