



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL REVISION NO. 387 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

GUYO JARSO BALA .....1<sup>ST</sup> ACCUSED

DAVID NJUGUNA KARANJA.....2<sup>ND</sup> ACCUSED

RULING

[1] Two significant orders were sought in the Application dated 3<sup>rd</sup> December 2018 to wit;

*(i) Review of bail and bond terms granted to the accused persons; and.*

*(ii) Order of release of Motor vehicle registration No. KBY 657K Scania Bus currently held at Timau Police Station.*

[2] The accused persons were charged with the offence of promotion of trafficking in person contrary to section 5 (d) of the Counter Trafficking in Persons Act No 8 of 2010. The particulars are that on 25<sup>th</sup> Day of November 2018 at Timau Market along Isiolo- Nairobi Road within Meru County the conductor and driver of motor vehicle Registration Number KBY 657K jointly knowingly transported FARIAH BARE and ABDIRISAK ABDIKADIR for the purpose of promoting trafficking in persons.

[3] The trial Court on 28<sup>th</sup> November 2018 ordered the release of the accused on cash bail or bond of KShs. 20 million. The accused persons sought review of the said terms but the trial Court on 5/12/2018 declined to review. Now I have to consider the request for review of bond terms.

[5] The prosecution has replied to this Application vide Replying Affidavit dated 2<sup>nd</sup> January 2018 by C.I. Anthony Kanisa who deposed that the aliens herein were aided by one Ahmed Oman, a Kenyan citizen who was arrested and charged in Cr. Case No. 66 of 2018. And upon further investigations they charged the 2 accused persons herein being Conductor and driver of KBY 675K in Criminal Case No. 68 of 2018. He also gave an indication that they are reviewing the file with the intention of making the accused persons herein prosecution witnesses in Criminal Case No. 66 of 2018 Republic Versus Ahmed Osman

[5] On continued detainment of the motor vehicle KBY 675K the prosecution acknowledged that they have concluded the investigations and taken the necessary exhibits. They seemed not to be opposed to the release of the motor vehicle herein except on conditions that; (1) the aforesaid motor vehicle should not be sold to 3<sup>rd</sup> Parties during the pendency of the case in the trial Court; (2) the registered owner gives an undertaking that he/she shall produce the subject motor vehicle whenever it is needed by the Honourable Court; and (3) the log Book thereto is deposited in Court.

[6] Revision of orders of subordinate court by this court is in exercise of supervisory powers established under article 165 (6) of the Constitution and under Section 362 and 364 (1) of the Criminal Procedure Code. The order to be reviewed relate to conditions of bond and cash bail. Article 49 of the Constitution provides as follows:-

**49. Rights of arrested persons**

**(1) An arrested person has the right—**

**(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released. [Underlining mine]**

Then according to the test prescribed in Article 49 of the Constitution the question becomes; are the terms herein reasonable conditions?

[7] What amounts to reasonable conditions will depend on the circumstances of each case. The accused persons herein have been charged by virtue of them offering transport and or movement to the aliens contrary to Section 3 and section 5 of the Act. The accused made arguments thereto but I find them to be in the nature of defence to the charges which should be made before the trial court. For that reason I will not evaluate the potency or otherwise of those arguments.

[9] The main aim of granting bail and bond terms is to secure the attendance of the accused persons. The trial Court granted the accused persons bail and bond terms commensurate to the fine that would be imposed on them if they are found to be guilty of the offence. The court is aware that the offences herein are very serious. However, by any estimation and by virtue of the presumption of innocence of the accused persons the amount of the bond as well as the cash bail is manifestly high and cannot really be said to have been prompted by necessity to secure the attendance of the accused persons during trial.

[10] I should also take into account that the prosecution under oath deposed that there is the likelihood that the accused persons may be turned into state witnesses. See the Replying Affidavit of C.I. Anthony Kanisa. If the prosecution is serious about this option why did they let the court expend its precious time and mind? They should so act and stop wasting court's time. Such conduct may also expose the state to unnecessary litigation and liability.

[11] From the foregoing, I review the bond and cash bail terms set at Kenya Shillings Twenty Million (Kshs. 20,000, 000/=). And order that each of the accused persons shall be released on bond of Kshs. 5,000,000 or cash bail of Kshs. 2,500,000.

### **Release of the motor vehicle**

[12] The motor vehicle herein is the subject of the criminal trial for it was allegedly used in transporting the aliens. However, I note that the prosecution acknowledges that they have completed investigations and collected exhibits in relation to the case. The prosecution is not also averse to the release of the said vehicle but subject to certain condition I mentioned above. Having these matters in mind, and the facts that the vehicle is also used in transport business and generates income for the owner, will not make sense to confine the vehicle into police custody. In the circumstances there is no reason to impinge on property rights of the owner. I am borrowing from the wisdom in the decision in **Republic v John Nganga Mbugua [2014] eKLR**. Accordingly, I make the following Orders;

- a. That prosecution shall submit vehicle registration no. KBY 675K SCANIA and photographs of it before the trial court as exhibits in the primary case. The registered owner of the said vehicle shall: (1) cause the deposit of the original log book of the said vehicle. The said log book shall also be submitted as exhibit in the case before the trial court; and (2) give an undertaking that he will not deal inappropriately with the said vehicle including sale, transfer, exchange, or do any other act or omit to do such things or acts as to waste away or dissipate the vehicle as an exhibit in the criminal trial. Of course, the owner of the vehicle shall also undertake to produce the vehicle before court if and when required in court.
- b. Upon satisfaction of (a) above, the trial court shall release the said vehicle to the registered owner of the vehicle. Any competent court shall handle this case in order to give effect to this ruling.
- c. The trial court's file shall be remitted back to the trial court for hearing and disposal.

Dated Signed and delivered in open Court at Meru this 17<sup>th</sup> Day of January, 2019

F. GIKONYO

JUDGE

In presence of

Kimathi for applicant

Kiarie for respondent

F. GIKONYO

JUDGE