

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 14 OF 2019

REPUBLIC.....DPP

VERSUS

SHARON KHALAI MARAMI.....ACCUSED

RULING

The applicant (accused), has filed a notice of motion application dated 8.10.2019, seeking basically that her passport number [...] deposited in court be released to her. It was submitted by counsel for the applicant that the applicant has never absconded neither has been stated that she is a flight risk. Lastly, that the applicant has to keep travelling to earn her living and it would be cumbersome to have her keep coming to court each time she intends to travel.

The application was opposed by the state on several grounds. First, that the passport was one of the terms imposed by the court on bail in addition to the other term that she should not leave the jurisdiction of court without leave of the court. Also, that the applicant has not indicated where she travels to, when or for how long, not shown any document in support of this. Counsel went on that not one will be held to account since the applicant deposited cash bail and no surety.

I have considered the submissions of both sides. The applicant seeks the release (to her) of her passport ordered to be deposited in court on 25.7.2019. I have considered the proceedings herein of the date. It is clear from the record that the prosecution made the application for deposit of the passport apparently out of years that she may leave the jurisdiction of the court. It was alleged that there was information that she works in Dubai. Of course the defence denied this stating that the applicant resides in Kenya. It is also clear that the court considered there submissions and made 2 orders in addition to the earlier orders made pursuant to the application's bail application. The 2 orders were:-

- (i) That the applicant do deposit her passport in court within 7 days of that date.
- (ii) That the applicant shall not leave the jurisdiction of the court without leave of the court.

The above orders do not bar the applicant from travelling out of the jurisdiction of the court. Neither do they inhibit the life of the applicant. To my mind, the orders were meant only to safeguard her appearance in court during the pendency of this case, especially since she is out on cash bail with no surety.

Further, this application only seeks release of the said passport based on the fact that she is a frequent traveler and that it would be cumbersome for her to keep coming to court for leave each time she is to travel. The application does not address itself to the last order of the court that she must first obtain leave of the court in case she is to leave the jurisdiction of the court. If the passport is to be released in the manner in which the applicant seeks, there is no guarantee that she would not leave the jurisdiction of the court without the knowledge or leave of the court, a fact that would be in clear breach of the orders of this court. It is therefore not sufficient enough for the applicant to claim that it would be cumbersome to keep coming to court to obtain such leave.

I do not see any change in the circumstances herein from those that appertained as at the date on which the court made the additional orders on 26.7.2019 for the said orders to be revised in any way. I consequently find no merit in this application dated 8.10.2019. I dismiss the same wholly.

D. O. OGEMBO

Judge

6.11.2019

COURT:

Ruling read out in open court in the presence of the accused Ms. Gichohi for the state and Mr. Baraka holding brief for Mr. Swaka for the accused.

D. O. OGEMBO

Judge

6.11.2019