

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL REVISION NO. 93 OF 2018

REPUBLIC.....APPLICANT

VERSUS

SINGH DEVANDRA JEET & 2 OTHERS.....RESPONDENT

(From Kericho CM CR. No. 1972 of 2018)

RULING ON REVISION

1. The accused in this matter, who are Indian nationals, are charged with the offence of failing to comply with the conditions of their visa contrary to section 53 (1) as read with section 53 (2) of the Kenya Citizenship and Immigrations Act 2011. The particulars of the offence are that on the 9th day of July 2018 at Unilever head offices Brooke within Kericho town in Kericho County being Indian nationals were found to have violated the condition of their visa not to engage in business or employment activities which require a work permit by engaging in consultancy services at Unilever Tea Kenya Limited contrary to the Kenya Citizenship and Immigration Act, 2011. The charge against them was later amended to include an alternative charge of failing to produce a permit contrary to the Kenya Citizenship and Immigration Act, 2011. They pleaded not guilty to the offence.

2. When the accused appeared before the court on 27th July 2018, they applied for release of their passports which the prosecution objected to. The court held that after having noted that the offence in question related to the use and/or conditions of the accused's visa, it was prudent that the release of the passports be determined after the trial. The court directed the prosecution to avail all its witnesses on the hearing date scheduled for 3rd September 2018 after which the court shall determine the question of release or otherwise of the visa. The court also directed that the accused should have certified copies of the visas/passports.

3. The matter did not proceed on the date scheduled, and it was next placed before the court that had made the orders of 27th July 2018 on 13th September 2018. The accused again requested for the release of their passports. The court rescheduled the hearing to the 1st of October 2018 and ordered the release of the passports in the following words:

“It is also prudent that the police do give back the original passports to the accused persons for purposes only of regularizing their presence in the County as at now.”

4. The prosecution has applied for revision of this matter under section 362 and 364 of the Criminal Procedure Code by its letter dated 26th September 2018. The prosecution alleges that the trial magistrate allowed the application for the release of the said passports back to the accused persons despite the previous ruling, before hearing of the prosecution case, to allow them to regularize their stay in the country. This was despite the fact that the accused faced a charge of being in the country irregularly which was still pending before the court. The prosecution further argues that the release of the passports amounts to interference with prosecution evidence. It is also its case that the accused are foreign nationals on cash bail, and they are therefore a flight risk.

5. Section 362 of the Criminal Procedure Code empowers the High Court to call for and examine the record of any criminal proceedings before any subordinate court in order to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order made by such subordinate court.

6. I have examined the record of the trial court and the orders made therein. As the trial court had correctly observed in its ruling of 27th July 2018, the charges facing the accused persons in this matter relate to the use and/or conditions of the accused's visa. The court therefore properly declined to order the release of the passports at that stage. The order for the release of the passports a few weeks later, while the same suit relating to the alleged violation of visa conditions is still pending, seems to have been reached in error.

7. In my view, the court had initially properly addressed its mind to the need to retain the documents forming the basis of the charge against the accused. To release the documents prior to the completion of the case would, as argued by the prosecution, undermine the entire prosecution case. The order of the trial court made on 13th September 2018 is consequently set aside. The court shall proceed expeditiously with the case and thereafter make a determination on the release of the accused's passports.

Dated and Signed at Kericho this 8th day of October 2018.

MUMBI NGUGI

JUDGE