

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPLICATION NO. 342 OF 2017

MILAN JAYENDRA MALDE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Before me is an application seeking the lifting of travel advisory on the passport of the applicant. He intends to travel to the UK to attend a wedding of his sister. I make the following observations;

First, the exact date of the wedding is either not known or/and has not been disclosed. Court cannot give a blanket travel permission to attend an event whose date of occurrence is unknown. A wedding is a specific event whose date is always set. I see no reason why the date should not be disclosed. This leads me to conclude that probably no such wedding exists.

Second, pursuant to the first observation, the estimate dates for the wedding coincide with the month of the hearing of one of the cases, being Cr. Case No. 1568/2010 set for 25/7/2017. I cannot vouch that the applicant once he travels to the UK early in the month of July, 2017 will avail himself for the hearing of the case.

Third, the travel advisory was imposed for a purpose, so as to ensure that the applicant and his co-accused do not leave the jurisdiction of the trial court. With the uncertainty of the return of the applicant, the lifting of the ban will defeat the very purpose for which the ban was imposed.

Four, is that the court must interrogate whether attending a wedding is such a need that the failure to do so would adversely affect the applicant. I am alive to the fact that weddings are valued events which any relative of the newly wed would not wish to miss. However, they do not present special instances that would warrant the court to take the risk that if the applicant is given permission to travel, he may not return for the trial.

Five, I am aware that the applicant deposited cash bail which is fluid and can easily be forfeited to the State if he strictly feels he does not want to return for the trial. Hence, the assurance that he shall avail himself is not secured.

Six, is the issue raised that restrictions on the passports of **Jayendra Khimji and Ranjan Jayendra** were not effected following the order in High Court Misc. Cr. Application No. 571/2017 by Hon. Justice Warsame, as he then was. There is no doubt that this was not done. I need not restate the said order. My comment on that is that the failure to have the order executed can only be apportioned to the DPP (prosecution) who failed to follow up on it. It is up to the DPP to do the needful.

Having made the above observations unfortunately, I am of the view that the court would be taking the risky path if it lifted the ban on the applicant's passport. Respectively, the application must fail. The same is dismissed with no orders as to costs.

Dated and Delivered at Nairobi this 13th Day of June, 2017

G.W. NGENYE-MACHARIA

JUDGE