



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**MISC. CRIMINAL CASE NO. 35 OF 2015**

**REPUBLIC ..... APPLICANT**

**V E R S U S**

**WILLIAM KIPCHIRCHIR CHEPKWONY ..... 1<sup>ST</sup> RESPONDENT**

**EDWARD MWIRIGI MUGWONGO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

Before me is an application dated 27/8/2015 in which the State prays that the bond granted to the respondents pending hearing of **Maua CRC 2809/2015** be quashed and/or reviewed upward to reflect the severity of the sentence. The application is grounded on the affidavit of **Evans Orange Onderi**, Senior Assistant Director of Public Prosecutions. The Respondents were charged before Maua Court with the following offences:

- 1. Unlawful use of Government vehicle contrary to Section 294 of the Penal Code;**
- 2. Trafficking in persons contrary to Section 3 (1) as read with Section 3 (6) of the Counter Trafficking in Persons Act No. 8 of 2010 and**
- 3. Offences by Public Officers Contrary to Section 129 (a) (b) of the PC as amended by Security Laws (Amendment) Act No. 19 of 2010;**

They were released on bond of KShs.2,000,000/= each with one surety of same amount and the hearing was fixed for 8<sup>th</sup> and 10<sup>th</sup> September, 2015; that most of the witnesses are police officers and can be availed and the case be heard expeditiously; there was therefore no need to place the accused on bond; that there are compelling reasons to deny the accused bond to wit; the offence is rampant and prevalent in the locality; that the bond terms were too lenient in view of the severity of the sentence likely to be meted if convicted; that the respondents have failed to disclose the kingpins behind the trafficking; that the respondents used Government property and that the 1<sup>st</sup> respondent has already been dismissed from the Police Force; that because of the severity of the offence, they are a flight risk.

The **1<sup>st</sup> respondent William Kipchirchir** filed a replying affidavit in which he denied being a flight risk; that he was released on bond of KShs.2,000,000/= and even without knowing of the application, he has been attending this court; that the issue of dismissal from the Police Force is under challenge in a Constitutional Reference and that bond of KShs.2,000,000/= was already too high for him to raise and his

father has already used his land as security and cannot afford anymore.

The **2<sup>nd</sup> respondent Edward Mwirigi** also filed a replying affidavit opposing the application. He deponed that there are no compelling reasons disclosed that would warrant him to be denied bond; that he is still in remand and is not a flight risk.

By the time this application was urged on 3/12/2015, the 1<sup>st</sup> respondent had been out on bond. The State has not demonstrated that he is likely to jump bond. The primary consideration in an application for bond is that the accused will turn up for his trial. So far, the 1<sup>st</sup> respondent has faithfully attended court and the court would not see reason to interfere.

As for 2<sup>nd</sup> respondent, he was still in remand, at the time of hearing of this application meaning that he is not able to raise the KShs.2,000,000/= bond.

One of the reasons for seeking a review of the bond terms is because of the severity of the sentence likely to be meted in the event of a conviction. For an offence of trafficking in persons, one would be sentenced to a term of not less than 30 years or a fine of not less than KShs.30,000,000/=. Already, the bond terms granted are out of reach of the 2<sup>nd</sup> respondent. In my view, bond of KShs.2,000,000/= is high enough even when considered with the severity of the sentence.

In the end, I find no good ground shown by the applicant to warrant a review of the bond terms granted to the respondents. I decline to grant the application.

**DATED, SIGNED AND DELIVERED THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2016.**

**R.P.V. WENDOH**

**JUDGE**

**9/2/2016**

**PRESENT:**

Mr. Kariuki for the State

Mr. Muriuki Holding Brief for Mr. Mbogo for Accused

Both Respondents, Present

Peninah/Ibrahim, Court Assistant