



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

MISCELLANEOUS CRIMINAL APPLICATION NO. 92 OF 2015

CLEMENT SERGE BRISTOL.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1 This is an application by way of Notice of Motion brought under section 123 (3) of the Criminal Procedure Code, Article 49 (1) (h) of the Constitution and all other enabling provision on the law.

2 In his application, the applicant seeks an order that he be released on bond pending trial of criminal case No 732 of 2015, Mombasa Chief Magistrates Court on such order as the court may deem fit.

3 In considering the application, I have read through the notice of motion dated 22nd October, 2015, the supporting affidavit of Jared Magolo, counsel for the applicant, the attachments to the said application and all the arguments advanced by both counsel to his court.

4 I find that the application is resultant of the ruling by Hon. Nang'ea, Chief Magistrate, Mombasa delivered on 1st July, 2015 in Mombasa Chief Magistrate's Criminal Case No 732 of 2015.

5 The said ruling has not been attached to the application herein. This has been confirmed by Mr Magolo counsel for the Applicant

6 According to Mr Nang'ea, in this ruling, all the accused were ordered to be released on bond except for his client on the ground that he is a foreigner.

7 I wish to point out that the right to bond is a Constitutional right guaranteed under Article 49 (1) (h) of the Constitution unless there are compelling reason for one to be denied the same. This therefore not absolute right.

8 The discretion to grant or not to grant bond lies with a particular magistrate of court after putting various considerations to play.

The main consideration in granting bond is the assurance by the accused either by himself/herself or by people related to him/her but he/she will avail himself /herself as and when required by the court.

9 There are also other considerations. Section 123 (3) of the Criminal Procedure Code provides;

“The High Court may in any case direct that an accused person be admitted to bail or that bail

required by a subordinate court or police officer be reduced”.

10 This section clearly affords the High court both original and revisionary jurisdiction. The application before me invokes the courts revisionary jurisdiction. It is trite law that anyone seeking to have variation of a court order or decision, must ensure their applications is accompanied by the said order or decision and all other relevant information there to

11 The application herein as conceded by the applicant’s counsel is not accompanied by the order dated 1st July, 2015 which it seeks to be reviewed.

This court therefore has had no been benefit of perusing the said order so as to appreciate the circumstances or reasons why the applicant was denied bond while the rest were released on bond.

12 I therefore direct the Applicant and his counsel to file and serve the office of the Director of Public prosecution with the order of 1st July, 2015 in Mombasa Chief Magistrate’s Criminal case No 732 of 2015 within 7 days to enable his court make an informed decision in this matter.

Mention on 22.9.2016 for further directions.

D. O. CHEPKWONY

JUDGE

Ruling read and delivered this 15th day of September 2016

In the present of:

Mr Ayondo for the state- present

Mr Magolo for the Applicant

C/clerk- Kiarie