



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**MISC. CRIMINAL APPLICATION NO. 11 OF 2014**

**(CR. 750/14 EMBU)**

**SULEIMAN KATHOMI Alias WAKARU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant filed this Notice of Motion dated 22/5/2014 for the following orders:-
  - (i) The Court to grant him stay orders to stop the magistrate's court from proceeding with Criminal Case No. 750/2014 at Chief Magistrate's court at Embu any further.
  - (ii) The Court makes an order that police case file No.411/2014 with all the prosecution evidence therein is forwarded to the office of the Director of Public Prosecution to certify whether the applicant is liable for prosecution.
  - (iii) This Court makes an order to the State Law Office at Embu not to tamper with already gathered evidence before the same is perused by Hon.Keriako Tobiko for further directions.
  - (iv) This application is grounded upon the annexed affidavit of Suleiman Kathomi and other reasonable grounds to be adduced during hearing thereof.
2. It is supported by his affidavit sworn on 22/5/2014.
3. The DPP's office was served and the application was heard interpartes on 4/6/2014.
4. In his submissions the applicant stated that after reading through the written statements he did not find any evidence which linked him to the offence of robbery with violence.
5. He also complained of the investigating officer wanting to victimize him since he had arrested him three times.
6. Infact he says there is no complainant in the case against him.
7. Mr. Wanyonyi for the State opposed the application saying that the trial Court had taken plea and thereafter heard the applicant on the issue of violation of his constitutional rights.
8. Secondly the investigating officer was summoned and the Court heard on the matter.

9. Finally he submitted that if the applicant has any serious complaints he should channel them to the DPP's office or the in-charge of the Police Division.

10. I did call for the lower court record which I have had a chance of perusing.

11. His plea was well taken and he was given a bond of Shs.2 million with a surety on 14/5/2014. The investigating officer was on the next day called to explain why the applicant was not availed in Court within 24 hours as required by the law..

12. The trial court heard him and made a decision that the investigating officer had given a satisfactory explanation for the delay.

13. Its not clear how the bond was reduced on 21/5/2014 by another magistrate without any request for the review being made but that's what the record shows.

14. All the issues raised by the applicant about written statements and bond terms should be handled by the trial Court.

In as much as the applicant is charged with robbery with violence, the Court while considering the bond terms to give should take cognizance of all the facts of the case and give reasonable bond terms as exorbitant bond terms amount to indirectly denying an accused person bond.

15. The matter complained of by the Applicant is before a competent Court and this Court has no reason whatsoever to make it interfere with the said matter.

16. The applicant is at liberty to raise any other complaints he has with the OCPD under whom the investigating officer serves or the DPP's office Embu. I am sure those two offices will assist him.

17. It is only the trial court (not this one) which after hearing all the witnesses will determine whether the applicant is linked to the charges or not. The applicant should allow the trial Court to carry out its mandate.

18. The applicant will therefore appear before the trial court on 9/6/2014 to make an application for review of his bond terms which I find to be unreasonably high.

19. Save for what I have stated at paragraph 18, I find the application to be lacking in merit and I disallow it.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 6TH DAY OF JUNE 2014.**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of:-**

**Ms. Mbae for State**

**Applicant**

**Njue/Kirong CC**