REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Crim Appli 278 of 2006

ROY KIAMA GICHUHI …….....…...……..
…….APPLICANT

VERSUS

REPUBLIC …….....……..……..….. RESPDONDENT

RULING

The Application before me is fairly straightforward and is not opposed by the Attorney General. It is a Chamber Summons Application expressed to have been brought under Section 135 and 136 of the Criminal Procedure Code. The orders sought in the Application are that the Applicant be granted an alternative surety in Criminal Case Numbers 339/2006, 678/2006 and 2778/2004 before the Chief Magistrate's Court.

The Application is supported by the Affidavit of the Applicant in which in the main he depones that in the two Criminal Cases viz 339/2006 and 678/2006 he is charged with obtaining money by false pretences. He was granted cash bail of Kshs.500, 000/= in respect of Criminal Case Number 339/2006 and Kshs.200, 000/= in Criminal Case number 678/2006. The Applicant has not been able to meet the said bond terms. He further depones that he has other five similar cases in various courts within Nairobi and Kisumu. All these other cases he has been bonded and has continuously honoured the bond terms. It is the view of the Applicant that his denial to be released on bond plus surety has occassioned him injustice and prejudice.

As for consolidation, the Applicant depones that the three Criminal cases – 339/2006, 678/2006 and 2778/2004 are fresh and that it will cut down on the costs and time if the same are consolidated. Similarly the Applicant claims that the cases will easily be managed if they are consolidated. That the cases arose from the same transaction and are founded on the same act and were investigated by Nairobi C. I. D. Branch. That at times the hearing dates for the cases coincide thereby inconveniencing him.

It is true that the Applicant faces several Criminal Charges of similar nature. On matters of bond, the Court entertaining the Application for bond exercises some discretion. Such discretion must ofcoruse be exercised judicially and not capriciously. Unless it can be shown that in arriving at the bond terms the trial Court took into account irrelevant consideration or failed to take into account relevant factors, this Court would not interfere with the discretion exercised by the Court. The trial Court must have had its reasons why it felt that cash bail and not bond plus surety was the appropriate order to make in the circumstances of those two cases. It would appear that the Court was cognizant of the fact that whilst the Applicant was granted bond and surety in respect of Criminal Cases numbers 451/2004, 2778/2004, 7708/2005, 292/2005 and 1661 /2003, he still did not change his style of doing things. He still went ahead and conducted himself in a manner that led to the charges in the latter cases being preferred against him. The trial Court cannot be expected to turn a blind eye to this aspect of the matter. From my perusal of the Court files in respect of Criminal case number 339/2006 and 678/2006, I do not discern any misdirection on the part of the Learned Magistrate in the manner he dealt with the bond Application. It was within his jurisdiction to order that the Applicant be admitted to cash bail and not bond plus surety. By so doing, the Learned Magistrate cannot be accused of bias and or prejudice. In any event, the records do not show that the Applicant has gone before the said Court and sought the variation of the bail terms and it was denied before he moved to this Court. Ideally the Applicant ought to have sought first variation of the bail terms in the subordinate Court. Had he done so and was refused, then the Applicant would have been perfectly entitled to move to this Court.

As for the consolidation of the three Criminal Cases, it is my view that this is not a viable option. In respect for Criminal Case number 2778/2004; the Offences were committed between 5th April and 9th November, 2004. The Complainant is John Karanja Njuguna. In respect of 678/2006, the Applicant faces a host of 8 charges ranging from obtaining money by false pretences, forgery, making a false document to altering a document without authority. The Complainants are all different. Some of the offences were committed in August, 2003, December, 2005 and even January, 2006. These charges were preferred by Kamukunji Police Station. Finally in Criminal Case number 339/2006, the Applicant faces three counts – stealing a motor vehicle contrary to Section 278 of the Penal Code, forgery and obtaining money by false pretences. The offences were committed in January, 2005 and investigate by Muthaiga Police Station. In these cases, he is charged with a co-accused. With this kind of scenario, it is absurd to suggest that these cases be consolidated. If consolidation was to be ordered it will make the trial cumbersome for both the trial Court as well as the Prosecution. Consolidation is not ordered for the convenience of an accused person but for ease of trial by the Court. It is also ordered where the charges sprung from the same transaction and the witnesses likely to be called are same. In the instant cases, the charges preferred are wide and varied. They were committed at different times and places. They were investigated by different Police Stations and witnesses are different. Indeed in one case, the Applicant is charged jointly with another person. It is not known whether the said co-accused is in favour of consolidation. He may very well not be.

Finally if consolidation was to be ordered, the charge sheet will end up being loaded with more than twelve counts. The court of Appeal has held in the past that a charge sheet should never contain more than twelve counts.

Though the Application was not opposed by the state, I will nonetheless refuse to grant the same for the reasons aforestated. Accordingly the Application stands dismissed in its entirety.

Dated at Nairobi this 18th day of September, 2006.

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MAKHANDIA

JUDGE