



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Crim Appli No 29 of 2006

CHRISTANT MUTISYA MAINGI.....APPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

I have decided to consider the Applications made in **Misc. Appl. No. 29 of 2006** and **Misc. Appl. No. 30 of 2006** together for reason that the Applicant in both cases is one **CHRISTANT MUTISYA MAINA**. The Application was argued for the Applicant by **MR. ORENGE** while **MRS. GAKOBO** represented the Respondent. The Applications came under certificate of urgency.

In **No. 29 of 2006** the Applicant sought this court to review or vary bond terms imposed by the Hon. Magistrate in Kibera Senior Principal Magistrate Court **Criminal Case No. 385 of 2006**. In the lower court, the Applicant had been given a bond of 3 million with one surety of like sum. The Appellant deponed that he was unable to get a surety for the said sum and sought a reduction of the same. The Applicant also deponed that he will attend court as required.

In **No. 30 of 2006**, the Applicant seeks a review or variation of bond terms in Kibera Senior Principal Magistrate **Court No. 386 of 2006** in which he was given a bond of 1 million with one surety of like sum. He deponed that he was unable to meet the bond terms because he would not be able to get a person to stand surety for him in the said sum.

MR. ORENGE for the Applicant relied on the Applicant's affidavit in both applications. **MR. ORENGE** submitted that the Applicant felt that the bond terms were excessive and sought a reduction.

MRS. GAKOBO opposed the application. Learned counsel for the State submitted that the terms ordered by the Court were reasonable in light of the charges facing the Applicant. Counsel submitted that in **Kibera 385 of 2006**, the Applicant faced several counts of stealing sums in excess of Kshs.3 million and in **386 of 2006**, he faced serious charges of **making documents without authority** contrary to **Section 357(1) of the Penal Code** and **uttering the same** contrary to **Section 353 of the Penal Code**. Counsel urged the court to find that the bond terms were not excessive and should not be interfered with.

I have carefully considered these two applications. I do not wish to repeat what the charges against the Applicant are in both lower court files since learned counsel for the State adequately covered that in her submission.

The Applicant was granted bail in both cases before the Senior Principal Magistrate Kibera Court. He now depones that he:

“will not be able to get a surety to fulfill the said....”

In reference to the bond terms given by the court, I have noted that the Applicant did not say that he attempted to raise the bond terms given by the court. Considering however, that the bond terms were given on 19th January 2006 and these applications filed in the 23rd January 2006, it can be assumed that some attempt to get sureties as ordered in each file has been made.

When considering the terms of bond it will give, a court must consider *inter alia*: -

(a) the nature of the charge or offence and the seriousness of the punishment to be awarded if the Applicant is found guilty.

(b) The likelihood of the Applicant committing further offences.

In the applications before me for consideration, (b) is of major importance because the Applicant in Kibera case **No. 385 of 2006** is alleged to have committed various other offences in November 2005, while in Kibera **Case No. 386 of 2005** he is alleged to have committed various other offences in January 2006. Going by the charges in both cases, even without hearing any arguments from the prosecution I find that there are good grounds to persuade this court to believe that the Applicant may commit other offences.

The nature of the offences are very serious. In the former case, the Applicant and others are alleged to have stolen in excess of 3 million shillings. In the latter case, even though offence of stealing is only an attempt, the other offences in the same charge are felonies. Taking all these into consideration I am satisfied that the bond terms given in both cases are quite reasonable and fair and ought not to be interfered with.

The applications are consequently both dismissed.

Dated at Nairobi this 27th day of March 2006.

.....

LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

Applicant - present

Mrs. Gakobo for the State

Mr. Orenge for Applicant

CC: Huka

.....

LESIIT, J.

JUDGE