

Background

There are several grounds on which this application is premised. They are set out in the Notice of Motion and elaborated in the supporting affidavits deposited by each of the applicants.

It is stated that the applicants were on the 6th of February 2017 charged with the offence of Obtaining Money by False Pretences contrary to Section 305 of **the Penal Code** and all remanded. On the 8th of September 2017, the 2nd and 3rd applicants applied to the trial Chief Magistrate for bail which was granted. One of the conditions was that they deposit 50,000,000/- cash. When the 1st applicant also applied for bail on the 21st of June 2019 it was granted on the same terms.

That for the whole period they have been on remand they have had no income. And that the money allegedly embezzled was invested in a business but swindled by a business partner.

Therefore the amount set is a defeat of justice as it is beyond their means and has in effect denied them the release intended.

That they are all presumed to be innocent and have a right to apply for bail.

It is against this background that that they have filed this application praying that this Court revise, downwards, the amount of cash deposit set.

Representation

At the hearing of this application, Mr Cranmer Tayebwa appeared for all the applicants, and Ms Sera Rita Becky for the respondent.

Issue

1. Whether the applicants are entitled to a reduction of the bail deposit sum set by the trial court

It should be noted that this is the second time that the applicants have moved the High Court for orders that the sum of bail deposit be reduced. On the 2nd of March 2020, the

Learned Justice Jane Frances Abodo found that the application bore no merit and dismissed it. On the 9th of September 2019, the instant application was filed.

Counsel for the respondent stated that as there had been a former application on the same issues, and the applicants have brought the very same application here, then they are barred. Secondly that the section under which the application was commenced relates to Revision which is only available where a final order has been made by the Court. That what the Court issued was an interlocutory order which cannot be the subject of a Revision.

The argument of Counsel for the Applicant was that where there is an evident violation of the rights of the applicant, the Court has a right to intervene. There is no double jeopardy here because the Hon Justice Abodo's decision was not a conviction.

It would be imperative for this court to determine the question whether this Court has the jurisdiction to entertain this matter where it has pronounced itself on the same matter.

Firstly the mandate to revise a sum or amount of the bail bond set by a Magistrate Courts stems from Section 75 (4) (a) of **the Magistrates Courts Act** which stipulates that,

The High Court may, in any case where an accused person is appearing before a magistrate's court where the case is not one mentioned in subsection (2), direct ... that the amount required for any bail bond be reduced.

It is clear that the application that was made to this Court and dismissed by the Hon Justice Jane Frances Abodo on the 6th of March 2020 was made in identical terms to the one here.

It appears that this is not a Revision in the terms of Sections 48 and 50 of **the Criminal Procedure Act** but one limited to the jurisdiction granted to this Court under Section 75 (4) (a) of **the Magistrates Court** to revise, downwards, the sum set for a bail bond.

The section gives the Court the discretion to revise the amount of the bail bond set. The principle is that the exercise of discretion should always be done judiciously. The Court should carefully weigh the facts against the law and for good reason take a decision.

In this case the Court has rendered its decision on the question of the adjustment of the bail bond sum. It has not been demonstrated how that order was bad in law and should be set aside. More importantly, the Court became *functus officio* on that 2nd of March 2020 when it gave the decision. This Court has not seen any provision of the law allowing it to revisit or vary that earlier order.

Therefore this court finds that the lower court granted the applicants bail. It was directed that a bail bond sum of 50,000,000/= be paid by each applicant. They first applied to this Court which dismissed their application on the 2nd of March 2020. The applicants have filed the same application here.

I find and hold that this Court has no jurisdiction to rehear this matter and the application is dismissed.

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Michael Elubu

Judge

27.2.2021