



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE 30 OF 2019**

**PROSECUTOR.....REPUBLIC**

**VERSUS**

**SIMON GITAU KARANJA .....1<sup>ST</sup> ACCUSED**

**DOMINIC OKOTH JOHN .....2<sup>ND</sup> ACCUSED**

**RULING**

The applicant herein, **DOMINIC OKOTH JOHN** (2<sup>nd</sup> accused) has moved this court by way of a Notice of Motion application dated 21.10.2021. The application at paragraph 2 prays:

***THAT the Honourable court be and is hereby pleased to review the Bail and Bond terms for the 2<sup>nd</sup> accused person issued by the Hon. Lady Justice Mutuku on 4.11.2019 directing the release of the 2<sup>nd</sup> accused person upon depositing a cash bail of Ksh.100,000/= with 1 surety.***

From the affidavit in support of the application and indeed from the submission of learned counsel for the applicant, it has come out that the original terms of bail as ordered by the court have since been revised to an alternative of Ksh.100,000/= in cash bail. It was submitted that the applicant has been unable to afford the terms of bail even as revised.

The learned counsel for the prosecution has opposed this application on grounds that the terms were set after consideration of full circumstances of the case including the pre-bail report, and that the applicant got the same terms as his co-accused.

Lastly that there has been no change of circumstances as to warrant a revision of the terms of bail.

I have considered this application and the submissions of both sides. It is worth noting that the applicant had on 28.6.2019 been placed on a bond of Ksh.900,000/= with 1 surety of a similar amount or an alternative of Kshs.400,000/= in cash bail. On his further plea, the court revised the terms of bail and ordered that he could be released on a reduced cash bail of Ksh.100,000/=. These are the terms the applicant seeks to have revised further.

In determining this application, this court is guided by the Provisions of Article 49(1)(h), that;

***“to be released on bond or bail on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”***

From the above it is clear that the constitutional threshold on terms of bail is reasonableness. What is reasonable would depend on the circumstances of each case. The applicant herein faces the serious offence of murder, an offence which attracts very severe or strict sentence in case of a conviction.

The issue is therefore if the terms the court has set are unreasonable in the circumstances. To say the least, in my opinion, the revised term of Kshs.100,000/= is extremely lenient in the circumstances. Worth noting is that the co-accused of the applicant has already secured the same terms and released from remand custody. I further hold the view that terms set are reasonable of the applicant. I therefore do not find merit in this application. Same is accordingly dismissed.

**D. O. OGEMBO**

**JUDGE**

**23.3.2022.**

**Court:**

Ruling read out in court (virtually) in the presence of the accused, Mr. Shadrack Wamboi advocate for accused and Ms. Kimani for the state

**D. O. OGEMBO**

**JUDGE**

**23.3.2022.**