



**Karobia v Republic (Miscellaneous Criminal Application  
E057 of 2021) [2022] KEHC 18050 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 18050 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS CRIMINAL APPLICATION E057 OF 2021**

**JR KARANJA, J**

**MAY 26, 2022**

**BETWEEN**

**JAMES NJUGUNA KAROBIA ..... APPLICANT**

**AND**

**REPUBLIC ..... ACCUSED**

**RULING**

1. The applicant, James Njuguna Karobia, is the third accused in CMCC No.E 1904 of 2021 at Busia in which he is jointly charged with others for robbery with violence, contrary to S.295 a read with S.296 of the *penal code* among other offences.

The group of four appeared before the Chief Magistrate on 16<sup>th</sup> June 2021 and each pleaded not guilty to the respective counts. Thereafter, the prosecution gave notice of its intention to oppose any application by the accused for their release on bail/bond pending trial.

Indeed, the accused separately applied for bond/bail. The court set a date for the hearing of the applications and the prosecution's objection thereto.

After the hearing, the trial court rendered its ruling on 15<sup>th</sup> September 2021 dismissing the accused's application for bond/bail and ordering that the accused persons be remanded in custody pending trial.

2. The accused were at the same time notified of their right to appeal the ruling. However, apparently being aggrieved by the ruling of the trial court the applicant deemed it fit to file the present application rather than a petition of appeal.

The application dated 8<sup>th</sup> November 2021 was filed herein on 9<sup>th</sup> November 2021 and is basically anchored on Article 49 (1) (h) of *the Constitution* which provides for the right of an arrested person to be released on bond or bail on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.



3. Considering that the trial court ruled in favour of the prosecution's objection to the release of the applicant on bond or bail and that the applicant had an automatic right to appeal the ruling in a higher court, it would follow that the present application is pre-mature as the applicant is yet to exhaust the appeal process which shall provide him with the best opportunity to raise the issues that he raises in the present application.

In any event, the right to be released on bond/bail is encumbered. It is not an absolute right as a person, may be denied bond/bail where the prosecution provides compelling grounds for such denial. The hearing of the applicant's application for bond/bail provided the opportunity for the prosecution to establish its grounds of objection and for the applicant to counter those grounds. It was after hearing the application and objection thereto that the trial court rendered its ruling effectively denying the applicant his right to bond or bail after being satisfied that there were compelling reasons not to release him on bond or bail.

Instead of appealing the trial court's ruling the applicant brought the present application, hitherto prematurely.

In the circumstances, the application is improper and incompetent before this court and even if it were proper and competent the applicant has failed to demonstrate how his right under Article 49(1)(h) was violated and/or breached by the trial court. The application is devoid of merit and is hereby dismissed.

**J.R. KARANJAH**

**J U D G E**

**DATED AND DELIVERED THIS 26<sup>TH</sup> DAY OF MAY 2022.**

