



**Director of Public Prosecutions v Maina & another (Criminal Case E038 of 2021) [2022] KEHC 10485 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 10485 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
CRIMINAL CASE E038 OF 2021  
GV ODUNGA, J  
JULY 28, 2022**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... PROSECUTOR**

**AND**

**TABITHA NJERI MAINA ..... 1<sup>ST</sup> ACCUSED**

**PRAOXIDES NALIAKA MUSHESHI ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. On May 19, 2022, I delivered a ruling in this case in which I found that the allegations made against the 1<sup>st</sup> accused, on their own, amounted to compelling reasons to deny her admission to bond or bail. I however found that the report of the probation officer revealed that it was in her own interest that she be rehabilitated before she could be released on bond since it was necessary that she be weaned off the effects of her alcoholism and bhang smoking which, in my view, could have adversely affected her in terms of adhering to the bail terms. Accordingly, I, at that stage, declined to admit her to bond or bail.
2. I however, made it clear that depending on her future conduct, this Court could consider whether or not to release her on bond.
3. Following the renewal of the bond application on behalf of the 1<sup>st</sup> accused, I on June 8, 2022 directed that updated reports from the Probation Officer and the Prison be availed. On July 12, 2022, the Probation Officer filed a pre-bail report dated July 12, 2022, in which it was reported that after undergoing introspective programmes, the 1<sup>st</sup> accused portrayed a positive behaviour change. Accordingly, the report recommended that the Court considers the 1<sup>st</sup> accused for stringent bond terms and that to address the flight risk she be ordered to deposit her passport in Court.
4. On their part, the prison authorities filed the report dated July 8, 2022 in which they revealed that the 1<sup>st</sup> accused has been participating in rehabilitation programmes which had impacted on her behaviour



positively. It concluded that the 1<sup>st</sup> accused is of good conduct and has never been involved in any disciplinary issues since being remanded in the facility but was orderly, obedient and hardworking.

5. The family of the victim however opposed the admission of the 1<sup>st</sup> accused to bail. Apart from regurgitating the issues which had been raised during the earlier hearing, it was contended that the period between which the pre-bail reports have presented before this Court is not sufficient time to determine conclusively whether the accused persons have reformed their behaviour. This is specifically because the purported change of behaviour could have been induced by the knowledge that the grant of bail is pegged on the accused persons' change of behaviour.
6. I have considered the reports availed before me as well as the submissions made on behalf of the victim's family. As stated hereinabove, the only reason why the Court did not admit the 1<sup>st</sup> accused to bond was due to the doubts raised regarding her conduct after the arrest. The evidence availed to me reveal that the 1<sup>st</sup> accused's conduct has changed positively. In my view there is no longer any reason why she should continue being incarcerated. However, the mere fact that she is admitted to bond does not mean that this Court cannot cancel her bond if in future her conduct is found to be inimical to her admission to bond. In other words, the enjoyment of her freedom pending the hearing of the case is solely in her hands and depends on how she conducts herself. If her conduct does not justify her being on bond she risks being kept in custody until her case is heard and determined.
7. In the circumstances, I made the following orders:
  1. The 1<sup>st</sup> accused may be released on bond of Kshs 1000,000.00 with one surety of similar amount to be approved by the Deputy Registrar of this Court.
  2. She shall attend the Court whenever required to do so without fail.
  3. She shall not contact or intimidate, whether directly or by proxy, any of the witnesses in this case as per the witness statements and other documents that have been supplied by the State to the defence.
  4. She must deposit her passport with the Court pending the hearing of the case or further orders.
  5. She must report to Nakuru Probation Officer after every two weeks until the hearing and determination of her case or until further orders of the Court.
  6. In the event that any of these conditions are violated, she is liable to have her bail cancelled and she shall proceed with the case while in custody
  8. Orders accordingly.

**RULING READ, SIGNED AND DELIVERED IN OPEN COURT AT MACHAKOS 28TH DAY OF JULY, 2022.**

**G V ODUNGA**

**JUDGE**

**In the presence of:**

**Mr Wairegi for the 1st accused and holding brief for Ms Njihia for the 2nd accused**

**Mr Jamsumba for the State**

**Mr Okatch for the family**

**CA Susan**

