



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO 20 OF 2019

REPUBLIC.....DPP

VERSUS

JOSEPH MWAURA KARANJA.....ACCUSED

RULING

1. **Joseph Mwaura Karanja** is charged with the offence of murder contrary to Section 203 as read with Section 204 of the **Penal Code**. He pleaded not guilty to that charge. His trial partially commenced on 2nd December 2019 when the prosecution's witness number 1 (**PW1**) was stood down on the application of prosecution. On that day the court granted the accused bond. The court ordered that the accused be released, pending trial, on bond of Ksh 500,000 and one like surety. The court also ordered that the accused's release was on condition that he would not interfere with witnesses in this case.

2. The accused has presented an application by Notice of Motion dated 20th July 2020 by which he seeks an order that this Court be pleased to vary/review the bond terms given on 2nd December 2019. The application is based on the grounds that the accused has been unable, one year after, to meet the bond terms; the accused has consequently been in custody for that period of time; and that the trial has not commenced.

ANALYSIS

3. When the case was adjourned, after receiving part of **PW1's** evidence, it was fixed for further hearing on 8th and 9th June 2020. The trial did not proceed on those set dates because of the preventative measures in respect of COVID-19, which halted trials in all courts. The fact that the trial has not progressed therefore cannot be blamed either on the court or the prosecution.

4. What however the accused seeks from this Court is the exercise of its discretion to vary the terms of bond.

5. It cannot be argued that this Court does not have the power to exercise discretion to review/vary the bond terms. In so reviewing/varying the bond terms this Court would be guided by the principle set out in Article 49(1) (h) of the **Constitution**. This Article provides that an accused shall be released on bond or bail, on reasonable conditions, pending trial. That Article provides an accused, such as the one before court, has that right to be released from custody pending trial. The accused herein was indeed ordered to be released from custody, as stated before, on bond of Ksh 500,000 and one surety of similar amount. It follows that the first part of that Article of the Constitution was met. Now, for the court to be moved, as the accused has done in the present application, for those terms to be reviewed/varied the accused had an obligation to show those terms were unreasonable, as required under that Article. Further the accused was obligated to show why in his special circumstances he says the terms of his bond were unreasonable.

6. The prosecution submitted in respect to the present application that the terms of bond were sufficient for the offence the accused faces.

7. Indeed, the accused is charged with the offence of murder whose maximum sentence, on a conviction, is one of death. With that in mind the accused in my view failed to place before this Court circumstances why the court should review/vary the bond terms. Bail pending trial is intended to ensure an accused does attend court for trial, when required to do so. The accused does not give an assurance to the court that if the bond terms, which in my view are very reasonable, are varied he would attend the trial.

DETERMINATION

8. It is because of the above that I find the Notice of Motion dated 20th July 2020 is not merited. It is dismissed.

SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF FEBRUARY 2021.

MARY KASANGO

JUDGE

11th February 2021

Before Justice Mary Kasango

C/A - Kevin

Accused – Joseph Mwaura Karanja

For the Applicant/Accused – Mr. Chaka

For the DPP – Miss Kathambi

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE