



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**CRIMINAL REVISION CASE NO. E088 OF 2020**

**ABDULRASHID MUSTAFA OMAR.....APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT**

**RULING**

This matter now comes up for the application of the applicant **ABDULRASHID MUSTAFA OMAR**, dated 27.11.2020. The same is brought under various provisions of the law including Article 165(6) of the constitution, section 123(3), 362 and 364 of the Criminal Procedure Code. prayers (b), (c) and (d) seeks that this court do consider the proceedings and orders made on 27.11.2020 in Makadara Criminal Case Number 1991 of 2020 (E1837 of 2020), Republic versus Abdulrashid Mustapha Omar (Hon. E. Kanyiri – Senior Resident Magistrate), and revise the same. The applicant pleads that this court do place the applicant on bond on reasonable terms. The application is supported by the affidavit of the applicant and attached exhibits.

The applicant's case as submitted by his counsel, Mr. Magara, was that the applicant was originally charged in Criminal Case Number 1886/2014 of the offence of obtaining money by false pretences and was granted a bond of Ksh.1million with 1 surety or an alternative of cash bail of Ksh.700,000/= which was later reviewed downwards to Ksh.100,000/=. He was released upon posting the cash bail, but thereafter failed to attend court severally. This necessitated the withdrawal of his case under section 87(a) of the Criminal Procedure Code. warrants of arrest were ordered to remain in force against him. He was then arrested on and brought to court on 16.10.2020 and the present file opened.

That despite pleas by the applicant that he had failed to attend court because he had had an accident in 2017 in which he suffered a fracture and that neither his advocate, not his surety had informed him of subsequent dates, the court denied him bail and ordered that he be remanded in custody pending his trial. It was pleaded that the applicant is asthmatic and aged, and exposed to Covid 19.

The prosecution side has opposed this application and only urged the court to consider the previous conduct of the applicant and that if he is to be released, stringent terms should be placed against him.

I have considered this application, the affidavit in support of the same, and the submissions made by both sides in court. This application is basically for revision of the orders of the trial court of 18.11.2020 denying the accused bond. Being an application brought under the revision powers of this court under section 362 of the Criminal Procedure Code, it is imperative that the applicant convinces this court as to the incorrectness, illegality and the impropriety in the orders of the lower court aggrieved of. I have perused and considered the ruling of the trial magistrate, and I must say that in considering the circumstances of the case, the learned Senior Resident Magistrate found correctly that there were compelling reasons that warranted the denial of bond to the accused. the applicant, vide this present application, has not in any way proved any incorrectness, illegality or impropriety in the said orders. Prima facie, therefore this application, brought under the revision rules of the court, cannot succeed.

Section 123(3) of the Criminal Procedure Code gives this court the original jurisdiction to grant bail to an accused person. This court has considered the specific circumstances of this case. It is pleaded that the applicant is of advanced age of 46 years (though no proof was shown). He is asthmatic. He also has an abdominal injury. There is also the Covid 19 pandemic which has spread across the lengths and breadths of the society. These factors convinces this court that in the interests of justice, it would be proper to grant the applicant bond. I accordingly therefore order that the applicant may be released on bond on the following terms:-

1. he may be released on a bond of Ksh. 1 million with 1 surety of a similar amount. The surety to be different.
2. In addition, the applicant shall deposit a cash bail of Ksh.200,000/=.
3. He is ordered to attend court for his trial without fail and from time to time as may be ordered by the trial court till his case is

determined.

Orders accordingly.

**D. O. OGEMBO**

**JUDGE**

**19.3.2021**

**Court:**

Ruling read out in open court (on-line) in presence of Ms. Chege for the state, Mr. Magara for accused and the accused.

**D. O. OGEMBO**

**JUDGE**

**19.3.2021**