



REPUBLIC OF KENYA

HIGH COURT

AT NAIROBI

CRIMINAL CASE NO. E013 OF 2020

LESIT, J.

REPUBLIC.....PROSECUTOR

V E R S U S

MARY WAMBUI MBURU.....1ST ACCUSED

ANN WANJIKU NJERI.....2ND ACCUSED

RULING ON BAIL VARIATION

1. Mr. Farrah for the 1st accused has urged this court to vary downwards the bond terms of his client. Counsel urged that the circumstances of the family of the 1st accused are such that they can only raise cash bail of KShs.100,000/=.

2. Mr. Naulikha Learned Prosecution Counsel opposed the application for variation of bond terms arguing that they were reasonable in the circumstances. Counsel urged the court to give additional terms by requiring that the 1st accused provides 2 sureties to sign for her release and that they should provide copies of their identity cards, if the court is persuaded to allow the application.

3. I see from the record of the proceedings that both accused in this case were granted bond by Ogembo, J on the 23rd October 2020. That is six months ago. They have been unable to post the bond terms all this while.

4. The decision whether to vary bond terms of an accused person is in the sole discretion of the court. However, that exercise of discretion should not be exercised capriciously or whimsically. The court should act judiciously. If the court declines the application, the court should in its ruling provide cogent reasons for so refusing.

5. In an application for variation, the court does not look into whether the accused should be granted bail, since that decision has been made. However, in order for the prosecution to oppose such an application, it should provide cogent reasons to persuade the court why the application is unmerited.

6. Conversely, I believe that it is the duty of the court to re-visit the bond terms granted to accused persons, where after some time it is clear that an accused has been unable to post bail. It will be within the court's powers to even act *sua moto* and reduce the bond terms. I say so because it can be safely said that once the court granted bail in the first instance, it is because the court was satisfied that there were no compelling reasons to deny bail to the accused person.

7. I am aware that bond terms should not be too low as to encourage an accused person to jump bail and not to show up for their trial. It is a balancing act which the court must do its best to maintain while bearing in mind the various interests which must be considered in such exercise, including those of victims of the crime.

8. I have considered the oral application by Mr. Farrah on behalf of the 1st accused. I have also considered the sentiments of the state, which are equally valid. I find that it is only fair to grant the application given the fact that the accused persons have for the last six months been unable to post bail. Further, and more importantly, no good ground was raised or demonstrated by the State to show why the application should be declined.

9. Having come to the conclusion I have of this matter I will allow the application to the following extent.

1) That the order of cash bail in the sum of KShs.200,000/= for each of accused persons is varied. The 1st accused may be released

on payment of cash bail in the sum of KShs.100,000/= and in addition she should provide one person to sign for her as contact person in case she fails to turn up in court as required.

2) The 2nd accused should also benefit from No.(1) above since the initial bond terms given by the court were similar to both accused.

3) All the other terms of bond granted by the court on 23rd October 2020 shall apply.

4) Those are the orders of the court.

DATED AT NAIROBI THIS 27TH DAY OF APRIL, 2021.

LESIT, J.

JUDGE

DELIVERED THROUGH TEAMS ON 27TH APRIL, 2021.

In the presence of:

Both accused persons

Ms. Ogwen for State

Mr. Farrah for 1st accused

LESIT, J.

JUDGE