



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION 355 OF 2019

DANIEL ODUYA OLOO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By a notice of motion application filed on 20th September 2019, pursuant to the provisions of; Article 50(q) of the Constitution of Kenya, 2010 and Section 362 and 364 of the Criminal Procedure Code (Cap 75) Laws of Kenya, the applicant is seeking for orders; that, the court review the order given in; criminal case number, 159 of 2018, at the Chief Magistrate's Court at Makadara, in relation to the bond terms therein.

2. The applicant states that, upon taking a plea of not guilty on the charge of defilement of a child contrary to, section 8(1) as read together with section 8(2) of the Sexual Offences Act, No. 3 of 2006, the trial court on 25th July 2018, granted him bond of, Kshs 300,000 with a surety of like amount, but without an alternative of cash bail. That to date, he has not managed to meet the bond terms, hence the prayer for the same to be reviewed and he be released on a bond of Kshs 50,000 with an alternative cash bail of Kshs 20,000.

3. The application is supported by grounds thereto and the affidavit sworn by the applicant. He deposes that, he was charged with the charges herein and subsequently convicted and sentenced to life imprisonment. However, upon appeal against the decision, the High Court on the 25th July 2018, ordered for a re-trial.

4. Consequently, he was charged afresh, and thereafter, he has made several verbal applications for reduction of bail in vain. He avers that, the continued incarceration in custody has made him suffer irreparably. That, he is a Kenyan with no foreign link and will attend all court sessions until the matter is fully concluded. Further, in assessing bond terms, the duration he has been in custody should be considered.

5. On 25th September 2019, when the application was placed before the court, it was ordered it be served for inter-parties hearing and a date thereof be fixed in the registry. On 25th November 2021, the Respondent was represented in court by the Honourable State Counsel Ms Chebii.

6. On 24th May 2021, the court gave the Respondent seven (7) days within which to file a response and/or submissions to the application.

The given period expired on or before; 31st May 2021. However, at the time of writing this decision, there is no response and/or submissions filed. In the given circumstances, I treat the application as unopposed.

7. Be that as it were, I have considered the lower court's record and I find that, on 6th August 2018, the applicant was arraigned in court for plea, which was deferred and administered on 8th August 2018. Upon taking a plea of not guilty, he was released on bond of Kshs300,000, one surety of like amount.

8. However, the case has not commenced hearing to date. The trial court's record shows that, the first hearing on; 31st did not proceed as the Honourable trial Magistrate was on leave. The matter was stood over to 20th March 2019. There is no record of what transpired on that date. However, on a date that is not clear, the matter was stood over to 8th May 2019 for hearing.

9. On 8th May 2019, the case was adjourned for the 3rd time due to the prosecution's inability to proceed. It was again stood over to 7th August 2019; then adjourned to 26th August 2019, as the trial Magistrate was on leave. It was again stood over to 30th August 2019, as the accused was unwell. However, on that date, the prosecution had no witnesses.

10. The case eventually, commenced on 27th November 2019, with the evidence of two prosecution witnesses. It is noteworthy that, thereafter, the case has been adjourned on; 3rd March 2020, 20th April 2020, and is currently being mentioned only "due to COVID".

11. From the aforesaid history, and/or background of the matter, the applicant has been on trial since on 18th September 2015, when he was initially arrested; a period of about five (5) years and nine (9) months. It is not even clear from the history thereof, how long, the trial will take. This period is evidentially oppressive.

12. The re-trial should have been given priority. I note from the initial record in criminal case number 2878 of 2015, the applicant had been released on bond of; Kshs 250,000 with one surety of like amount and in the alternative, cash bail of Kshs 200,000. The subject bail terms should have been taken into account when the subsequent bond terms were imposed, unless there was a good and/or reasonable ground to; vary the same upwards. I also note that, the applicant was not given an alternative of cash bail. No reasons are advanced for the same.

12. Be that as it were, this matter needs to be dealt with expeditiously. In that regard, I order that, this matter should be heard on priority basis and be finalized within six (6) months of the date of this order in view of the period it has been in court.

14. This order should not be viewed to be micro managing the trial court judicial function but is given pursuant to the provisions of; Article 159(2) of the Constitution for expeditious disposal of matters in court and 165 (6) that confers supervisory jurisdiction to the High Court. Finally, the daily lament of 'Wanjiku is the old adage that, "justice delayed is justice denied". However, the COVID -19 challenges and/or Ministry of Health guidelines, will be observed.

15. In the meantime, a pre-bail report should be provided to the trial court for consideration for review of bond terms. The trial court should consider the same and make appropriate orders. Leave is granted to the applicant to revert to this court if need arises, but only after the trial court has considered the review application and if the applicant is dissatisfied and follows the legal process to approach the court.

16. It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED THIS 30TH DAY OF JUNE 2021

GRACE L. NZIOKA

JUDGE

In the presence of:

Applicant in person

Ms Kibathi for the Respondent

Edwin Ombuna – Court Assistant