



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAROK
CRIMINAL CASE NO. 35 OF 2017
(CORAM: F.M. GIKONYO J.)

REPUBLIC

-VERSUS-

SIMON KARIUKI.....1ST ACCUSED

JAMES KINYUA MWANGLI.....2ND ACCUSED

ALEX AKOSA SAINA ALIAS ALEKI.....3RD ACCUSED

FREDRICK RISA KOSEN ALIAS FREDDY.....4TH ACCUSED

RULING

Review of Bond Terms

1. On 21/9/2017 the accused persons were granted bail of one million shillings with a surety of a similar amount.
2. On the 15th July 2021, the 1st and 2nd accused persons through their defence counsel Ms. Nkurunah orally applied for reduction of bond on the ground that they cannot raise the bond as granted. They beseeched the court to grant favourable bond terms. They further argued that they have always been ready to proceed with their case.
3. The prosecution opposed the request for reduction of bail on the ground that the bond terms were reasonable given the seriousness of the offence. Ms. Torosi further stated that all accused in the same case should be given similar bond terms.
4. In rejoinder, the Applicants submitted that they should not suffer due to adjournments by prosecution.

ANALYSIS AND DETERMINATION

5. The court has the power to review bond and bail conditions pursuant to Section 123(3) of the Criminal Procedure Code. The bond terms set out against the Applicants are Kshs. 1,000,000/- bond with a surety of a similar amount. The Applicants were charged alongside two others and the two are the only ones in remand.

Reasonable conditions

6. Under Article 49(1) (h) of the Constitution, the accused is entitled to be released on bond on reasonable conditions. There is little point in attempting to ascribe any specific measure or prescription for ‘reasonable conditions’, for in one case, ‘reasonable conditions’ may entail a cash bail of a certain amount or other; while in another case a personal bond with or without surety is sufficient. A free bond with or without conditions may also be ‘reasonable conditions’ in some cases. Therefore, ‘reasonable conditions’ for purposes of article 49(1)(h) of the Constitution should be determined in light of the circumstances of each case. Nevertheless, any conditions imposed should be capable of securing the liberty of the accused, on the one hand, and guaranteeing his attendance in the trial, on the other hand. The latter secures the integrity of the trial and the rights of the victims of the crime; and is not the lesser.

7. It is not lost to the court that the accused enjoys the right of presumption of innocence until otherwise proved. The prosecution, unless it is

demonstrated that he is flight risk, affordable bond terms should be granted. It is a cardinal principle that the main factor for consideration in granting an accused bail is that he would at all times attend the trial. I have not seen an indication that the Applicants are flight risk. It also was never submitted before this court as much. There is no reason in the circumstances to grant stringent terms of bond which the Applicants cannot afford. Further, owing to the seriousness of the offence, the bond terms must be attached to a condition so as to ensure that the Applicants attend court. Cash bail may not be the best option in the circumstance.

8. In the upshot, I set aside the bond terms granted on 21/9/2017 and substitute them with an order that the 1st and 2nd Applicants be admitted to a bond of Kshs. 500,000/= with one surety of a similar amount each. The surety be approved by the Deputy Registrar. The accused persons to attend court as and when required.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 28TH DAY OF SEPTEMBER, 2021

F. GIKONYO M.

JUDGE

In the presence of:

1. All accused persons
2. M/s Nkuruna for 1st and 2nd accused
3. Ms. Nkuruna holding brief for Ms. Martim for 3rd accused and Mr. Onduso for 4th accused.
4. Mr. Kasaso – CA

F. GIKONYO M.

JUDGE