



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

MISC. CRIMINAL APPLICATIONS Nos 18 AND 21 OF 2019 (CONSOLIDATED)

PETER DENNIS RAMALI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The Applicant in these two applications, **PETER DENNIS RAMALI**, is the accused in *Nanyuki CM Criminal Case No 511 of 2019* where he is being tried for the offence of robbery with violence contrary to section 296(2) of the Penal Code and an alternative charge of handling suspected stolen property contrary to section 322(1) & (2) of the Penal Code. This trial is on-going, and so far 4 prosecution witnesses (all civilians, including the complainant) have testified.

2. By these two applications the Applicant has sought-

- (a) Transfer of his trial to another court.
- (b) To be admitted to bail pending trial.

3. Although the Respondent had initially opposed the bail application, at the hearing of these applications learned prosecution counsel stated that since all the civilian prosecution witnesses have already testified, the Respondent would no longer oppose the Applicant's admission to bail pending completion of his trial.

4. Bail pending trial is now a constitutional right that will be denied only for compelling reason; and any conditions that the court might impose for such bail, again by constitutional edict, must be reasonable. For all this see **Article 49(1) (h)** of the *Constitution of Kenya, 2010*.

5. With the above position taken by the Respondent, I find no reason at all to deny the Applicant his constitutional right to bail pending completion of his trial. He shall be admitted to bail, in the trial court, upon his own cognizance in the sum of KShs 1 million plus two (2) sureties in like sum.

6. That leaves only the application for transfer of the Applicant's trial, which is opposed by the Respondent by a replying affidavit filed by one **CECILIA KINYANJUI**, a senior prosecution counsel. I have read that affidavit, as well as the Applicant's affidavit sworn in support of the application. I have also considered the submissions of the Applicant (who was unrepresented) as well as those of the learned prosecution's counsel.

7. The application is predicated upon the trial court's decision to bring forward the trial of the Applicant in order to enable the complainant and his wife to testify as he was scheduled to shortly fly out of the country for further treatment of his serious injuries allegedly suffered by him during the robbery charged. The Applicant protested that he was not ready for the trial. He complains therefore that he is not having, and cannot have, a fair trial before the trial court.

8. On its part the Republic urges that it gave good reasons to the trial court for bringing the trial forward, and the court agreed after due consideration of the opposing positions; and that the Applicant was not prejudiced in any way at all, and is receiving a fair trial before the trial court.

9. **Section 81(1)(a)(ii)** of the *Criminal Procedure Code, Cap 75* provides as follows:-

"81. (1) Wherever it is made to appear to the High Court –

(a) That a fair and impartial trial cannot be had in any criminal court subordinate to it; or

(b)

it may order –

(i)

(ii) That a particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other criminal court of equal or superior jurisdiction.”

10. I have examined the record of the trial court. The Applicant took plea on 15/04/2019 and denied the charges. He had a defence counsel at that time. The case was fixed for hearing on 08/07/2019. The prosecution counsel then informed the court that the complainant intended to travel to the **United Kingdom** to seek better medical treatment for his injuries and requested for an earlier hearing date to take his evidence. The Applicant’s defence counsel did not have any objection. The hearing date was then changed to 29/04/2019.

11. The trial court record shows further that the matter was placed before the trial court on 17/04/2019. It is not apparent from the record how this date was taken. The Applicant complains that he was just brought to court that day without notice and without the knowledge of his counsel. The court record appears to bear him out on this.

12. The prosecution counsel then informed the court that the complainant was before the court; that he was due to travel to the **United Kingdom** on 19/04/2019 for better treatment for his injuries and would be accompanied by his wife; and that therefore the court should allow both to testify immediately.

13. The Applicant protested that he was not ready for the trial and pointed out that he had just that morning been supplied with the witness statements. He also pointed out that his defence counsel, a Mr. Kinyua, was not in court.

14. In its ruling the trial court appreciated the complainant’s need to travel out of the country for specialized treatment. It also appreciated that the notice to the Applicant was too short and that he could not proceed with the trial that day. It gave him 12 hours to read the witness statements and prepare for trial the following day, 18/04/2019. The court did not address the issue of the absence of the defence counsel or how the Applicant was to reach him, given that he was in remand custody. The court then noted that copies of an amended charge sheet, additional witness statements and other documents were just then handed over to the Applicant in court.

15. Come the following day, 18/04/2019, and the Applicant protested again that he was not ready to proceed with the trial. The court referred to its ruling of the previous day on the issue and then proceeded to take the testimonies of the complainant and his wife. The Applicant did not cross-examine them. The trial court noted that he “opts to keep quiet”. I have no doubt in my mind that the Applicant refused to cross-examine as a protest to the fast-tracking of his trial without him being ready, and in the absence of his defence counsel.

16. I have agonized over this matter to try and find where the justice of it lies. I have no doubt at all that the trial court was motivated by the desire to do justice to the case given the imminent departure of the complainant (and his wife), who were apparently foreigners, to the **United Kingdom** for treatment. It is apparent from their testimonies however, that they would have returned to the country and be thereafter available to the court for some time. So, the trial court ought to have been more sympathetic to the position of the Applicant and not allow him to be ambushed, as it were, into a trial in the absence of his advocate. Whereas it is always important to do justice to a complainant in a criminal trial, it is equally important that justice be done to the accused person.

17. It was, however, extremely unwise for the Applicant herein to refuse to cross-examine the complainant and his wife. He ought to have done his best in the circumstances and pick up the issue later on appeal should he be convicted.

18. I am clear in my mind on one thing though; that is that there was no bias against the Applicant in the mind of the trial court. What there was, was excessive zeal to do justice to the complainant, and in the process the need to do justice to the Applicant as well escaped the trial court’s mind.

19. I am however satisfied that a fair and impartial trial can still be had in the trial court as long as the complainant and his wife are made available for cross-examination by the Applicant should he desire to cross-examine them.

20. I will therefore refuse the application for transfer of the trial with the direction that should the Applicant so apply to the trial court, the complainant and his wife (who testified as PW1 and PW2 before the trial court) shall be recalled for cross-examination. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 17TH DAY OF JANUARY 2020

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 30TH DAY OF JANUARY 2020