



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CRIMINAL REVISION NO. 3 OF 2020

EZEKIAH OCHUKA ADOYO.....1ST APPLICANT

PAMELA AWUOR AKIRI.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

[Being Revision from original Winam CM's Criminal Case No. 107 of 2020]

RULING

The Applicants, **EZEKIAH OCHUKA ADOYO** and **PAMELA AWUOR AKIRI**, have requested this court to revise or set aside the orders which the learned trial magistrate made on 30th January 2020.

1. It is common ground that the Applicants were charged alongside 2 other accused persons in **Criminal Case No. 107 of 2020**. That case is currently pending at the Principal Magistrate's Court, Winam, Kisumu.
2. All the 4 accused persons pleaded "Not Guilty", in respect to the 12 Counts that they were charged with.
3. The accused are faced with 6 counts of Fraud in relation to Tax, and another 6 counts of Failure to pay Tax.
4. Immediately after the accused had taken plea, they asked the court to release them on reasonable Bail or Bond terms.
5. The trial court granted to each of the accused persons, a cash bail of Kshs 1,500,000/= or a Bond of Kshs 3,000,000/=.
6. The Applicants have told this court that they each earn such low incomes that they have no ability to meet the terms of the Bond or Bail.
7. Ezekiah Ochuka Adoyo told this court that he is a driver by profession and that he makes less than Kshs 30,000/= per month.
8. He provided the court with a letter from Senior Chief Benson Midigo, of North Kamagak Location, Rachuonyo South Sub-County, stating that he was a driver.
9. Meanwhile, Pamela Awuor Akiri told this court that she is a widow and a mother to her young family.
10. The court was told that Pamela's Cash Bail was paid by a friend, who would be charging interest at the rate of 5% monthly. Accordingly, Pamela was fearful that she would be unable to support her young family, if she had to continue paying the interest at 5% per month, on the Cash Bail amount of Kshs 1,500,000/=.
11. I note that the husband of Pamela, (who is named **DANIEL AKIRI NYANGIJA**) died on 19th August 2001: That is almost 19 years ago. As Pamela did not provide the court with particulars of her family, this court is unable to ascertain her actual family circumstances.
12. In the absence of further information, this court holds the view that it is unable to verify whether or not the conditions imposed by the learned trial magistrate were unreasonable, as suggested by the Applicants.
13. When a trial court is called upon to determine the terms upon which an accused person is to be granted Bail or Bond, the said court has

the requisite mandate to determine such terms as may be deemed to be reasonable.

14. Unless the trial court can be shown to have exercised its discretion in a manner that was unjust or unfair or unreasonable, the High Court should be slow to interfere with the decision of the said trial court.

15. The court that has to determine the terms for Bail or Bond is called upon to take into account the circumstances of the case, including the circumstances of the accused person.

16. And when there were more than one accused person in a particular case, the court needs to be fair to all the accused persons, otherwise the said court might be said to have acted in a discriminatory manner.

17. But, it is equally true that the similarity of the Bail or Bond terms for all accused persons in any given case could possibly be an injustice for some of the accused.

18. Therefore, whilst uniformity of terms and conditions for Bail and Bond is generally indicative of the equality of accused persons before the court, it may sometimes be necessary for the court to be ready to impose different terms and conditions for accused persons, even in the same case, provided that the court was satisfied that that would be in the interests of justice.

19. In effect, it is open to any accused to seek to persuade the trial court to review the terms and conditions which were originally imposed by that court.

20. When called upon to consider a review of the terms and conditions of Bail or Bond, the court was not sitting on an appeal over its earlier decision.

21. Circumstances of the accused may have changed, or the circumstances of either the Complainant or of witnesses could have changed.

22. If witnesses deemed to be vulnerable had testified, the court could more readily review the terms and conditions so as to make it easier for the accused to meet the same.

23. Whereas the High Court may be called upon to review the terms and conditions of Bail or Bond, which had been imposed by the magistrate's court, the accused person should be alive to the fact that the High Court would most probably have to take a longer period to fully appreciate the circumstances prevailing before the trial court.

24. The reason why the High Court should ordinarily take longer to determine whether or not the terms and conditions imposed by the magistrate's court were reasonable, is because that issue cannot be determined in an abstract manner, lest the High Court be perceived to simply want to replace the discretion of the magistrate with its own.

25. An important tool for determining whether or not the terms of Bail or Bond are reasonable is the pre-bail report.

26. When a report forms the foundation upon which the court sets the appropriate terms or conditions for Bail or Bond, there is a much greater sense of fairness.

27. In this case, I do not have the independent evaluation by a Probation Officer, who could have enabled the Court arrive at an informed decision on the question as to whether or not the Bail terms ought to be reviewed. Therefore, for now, I reject the application.

28. Finally, I wish to re-emphasize that just because this court has, (for now) rejected the application for review, that does not constitute a bar to the Applicants, if they should be minded to seek a review before the trial court.

DATED, SIGNED and DELIVERED at KISUMU

This 27th day of **February** 2020

FRED A. OCHIENG

JUDGE