



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CR. APPLN. NO. 24 OF 2020

HARON MWENDA GITOBU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(An application for the review of the order of Hon. S. Mungai CM. made on 30/3/2020 in the Isiolo CMCr. Case No. 11 of 2020)

R U L I N G

1. By a Motion on Notice dated 1/4/2020 brought under **Article 50, sections 123(3), 362, 364, 365, 366 and 367 of the Criminal Procedure Code**, the applicant applied for the revision of the decision of the trial Court made on the 31/3/2020. Further, the applicant sought that the bond of Kshs.2 million with two sureties of a similar amount that was given by the trial Court be revised downwards.
2. The grounds upon which the application was predicated were set out in the body of the said Motion as well as the Supporting Affidavit of **Haron Mwenda Gitobu** sworn on 1/4/2020.
3. These were that; the terms of the bond given to the applicant were excessive considering that the respondent did not give any compelling reasons; that in view of the measures put in place by the government at this time due to the Covid-19 pandemic, it will not be possible to meet the conditions set by the trial Court.
4. In his supporting affidavit, the applicant swore that on 31/3/2020, he was arraigned before the CM's Court Isiolo with two counts of trafficking of narcotic drugs and grievous harm. That the prosecution did not oppose his application for bail and the trial Court released him on a personal bond of Kshs.2 million with two sureties of a similar amount.
5. According to the applicant, those bond terms were onerous. That he was a Kenyan having a personal abode in Meru, married with children who depended on him. That he was not a flight risk and that the bond terms given to him were akin to denying him bond.
6. This is an application for revision under **section 364 of the Code**. The jurisdiction of this Court under that provision is well defined. It is to call for the trial Court's record to satisfy itself as to the correctness of any proceeding or order made by the lower court.
7. The order complained of was made on 30/3/2020. It required the applicant to post bond of Kshs. 2million with two sureties of a similar amount. The applicant swore that because of the current measures put in place by the government to contain the Covid-19 pandemic, it was not possible to raise the bond. That the Land Registry was closed and no search Certificate can be procured therefrom.
8. Firstly, looking at the offences the applicant is charged with, they are very serious in nature. In the first count, it is alleged that he was trafficking Cannabis Sativa weighing 280kg. In the second count, it was alleged that he, in the company of others, had assaulted PC. Ali Diba by use of a firearm. No doubt if convicted, the sentences are stiff.
9. While bond terms are supposed to be reasonable and not to stifle an accused's right to liberty, the terms should also not be so light as to encourage an accused to abscond. The court should always strike a balance, between the accused's constitutional right to the presumption of innocence with the public interest principle that criminal justice should not be frustrated by the possibility of an accused absconding. One of the ways of discouraging a possibility of absconding is to mete out reasonable bond terms that are commensurate with the offences facing an accused.
10. In the present case, the trial Court considered that the prosecution had not opposed the application for bond. It further considered the nature of the offences that the applicant was facing before granting the aforesaid bond.
11. The granting and or refusal to grant bond is a matter in the discretion of the trial Court. Like all discretions, the same should be exercised judiciously. An appellate Court, and this Court for this matter, is not to interfere with the exercise of that discretion unless it is shown that the

same was wrongly exercised or the Court took into consideration an irrelevant matter or failed to take into consideration a relevant matter.

12. As I have already stated, the trial Court took into consideration all the relevant matters before exercising its discretion. It has not been demonstrated that the Court acted wrongly or abused its discretion in making the impugned order. The bond terms in my view were reasonable.

13. Secondly, I have considered the record carefully. I have noticed that contrary to the averments that the applicant is unable to post the bond given, on 6/4/2020, two of his sureties presented themselves before the trial Court and their bonds were approved.

14. In view of the foregoing, I hold that the application for revision is without merit and the same is hereby dismissed.

DATED and DELIVERED at Meru this 29th day of April, 2020.

A. MABEYA

JUDGE