



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

MISC. CRIMINAL APPLICATION NO.9 OF 2020

JOSEPH WERU MURIITHI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Application coming for consideration in this ruling is dated 8/4/2020 seeking for orders that this court calls for and examines the record in Kericho Magistrate's Criminal Case No.5626 of 2019 and to revise, review and set aside the ruling on bail and subsequent orders made on 10/1/2020 in relation to the bond granted by the court.
2. The Application is supported by the Supporting Affidavit of JOSEPH WERU MURIITHI, the Applicant herein in which he has deposed that he was arrested on 1/12/2019 at his home in Njoro and subsequently charged with the offense of robbery with violence contrary to section 295 of the Penal Code.
3. The Applicant further stated in the Supporting Affidavit that he was granted a bond of seven (7) million shillings with one surety of similar amount which he is unable to raise since he is a pauper with a humble family back and further that he is the sole bread winner of his young family.
4. The Respondent filed a Replying Affidavit dated 5/5/2020 opposing the Application in which it is stated that the state had opposed bond and further that the court took into account the circumstances of this case before granting the bond of Kshs. seven million.
5. The parties were directed to file written submissions in view of the prevailing circumstances and the health regulations on the Covid19 Pandemic.
6. The Applicant's counsel submitted that the bond terms imposed by the trial court are excessive and they relied on **Misc. Application No.70 of 2017 STEPHEN GITAU KARANJA vs REPUBLIC [2018]eKLR** where the court gave a bond of Kshs.500,000/= in a similar case with an alternative of a cash bail of Kshs.150,000/=.
7. It was further submitted that there was no evidence placed before court that there were compelling reasons not to grant the Applicant bond or that he is likely to interfere with investigations or witnesses.
8. It was also submitted the Applicant is a law abiding citizen with no previous record and that this court should exercise its discretion to revise the bond terms imposed by the trial court.
9. I find that the Applicant was granted bond but his contention is that the bond granted was excessive.
10. The circumstances under which a court may interfere with the trial court's discretion is where the trial court had misdirected itself in certain matters and had arrived at a wrong decision or where it is shown that the trial court was wrong in the exercise of its discretion and that as a result there has been a mis-justice.
11. In the current case, I find that the court considered various factors including the seriousness of the offence and gave the Applicant a bond of Kshs. seven million with one surety of similar amount.
12. The Authorities relied on by the Applicant can be distinguished on the ground that each case is determined on its own merit. The circumstances of this case are peculiar in that the Applicant's co-accused was sentenced to 10 years imprisonment and the Applicant who has been trying to interfere with witnesses is likely to jump bail.

13. The Replying Affidavit also states that the Applicant has been trying to contact the wife of his co-accused pressuring her to convince her husband not to testify against him.
14. The Applicant is at liberty to seek review of the bond terms before the trial court if there is a change of circumstances.
15. I find that there is no reason to interfere with the trial court's exercise of its discretion in granting the said bond.
16. The Application dated 8/4/2020 lacks in merit and I accordingly dismiss it with no orders as to costs.

Delivered, dated and signed at Kericho this 24th day of July 2020.

A. N. ONGERI

JUDGE