

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.542 OF 2019

WALTER AGUVASU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Walter Ondari Aguvasu, is facing various charges relating to **conspiracy to defraud** under **Section 393** of the **Penal Code** and **theft** under **Section 268(1)** as read with **Section 275** of the **Penal Code**. The Applicant is facing the said charges before three (3) courts: At Milimani Chief Magistrate's Court (**Criminal Case No.1669 of 2017 and 1670 of 2017**), at Makadara Chief Magistrate's Court (**Criminal Case No.3247 of 2019**) and at City Court Chief Magistrate's Court (**Criminal Case No.1223 of 2017**). In all the cases, the Applicant pleaded not guilty to the charges. He was released on bail pending trial in all these cases. However, the Applicant has not been able to meet the bond terms imposed on each case. He has consequently made an application to this court to have the bond terms issued by the various courts consolidated into one so that he can be able to meet the said bond terms.

During the hearing of the Application, Ms. Maina for the Applicant reiterated that the issue before the court is not whether or not the Applicant should be released on bail pending trial but rather variation of the terms of bond that were imposed by the trial courts. She submitted that the Applicant was granted bond by the various courts. Unfortunately, he had not been able to raise the said bond terms. He was therefore requesting the court to consolidate the various bonds that were issued to him into one consolidated bond term so that he can be able to be released to enjoy his liberty pending the hearing and determination of the various criminal cases that he is facing. She urged the court to take into consideration the fact that during the period that the Applicant has been in remand custody, his family had been deprived of a breadwinner. She insisted that the Applicant was not a flight risk and would attend court when required.

The Application is opposed. Mr. Momanyi for the State submitted that the Applicant was facing various charges before various courts. It is not possible to consolidated bond terms in respect of cases which are before separate courts. If the court was minded to grant the application, he insisted that the Applicant should provide at least two sureties to ensure that the Applicant attends court during trial. He was however of the view that the application should be disallowed.

This court has carefully considered the rival submission made by the parties herein. The **Criminal Procedure Code** does not provide for consolidation of bond terms in respect of separate cases and in separate courts. However, practice has evolved whereby, in the broader interest of justice, courts have allowed an accused, who has several charges facing him in different cases in the same court to have their bond terms consolidated so as to enable the accused to be released on bail pending trial. The situation in respect of charges laid against an accused in different courts is however different. The court in **Jackson Ngui Kisaa vs. Republic [2017] eKLR** held thus:

“Whereas it is the Applicant’s Constitutional right to be released on bail pending trial unless there are compelling reasons, this court is of the view that it cannot consolidated the bond terms granted to the Applicant by different courts. The reason for this is that it would be impossible for the two different courts to supervise the Applicant and ensure that he attends court without fail.”

In the present application, the Applicant is facing charges before three different courts. The principle enunciated above applies in his case. It will be impossible for any of the courts to supervise him should he abscond from the jurisdiction of the court.

This court therefore holds that the Applicant’s application cannot be allowed. It is hereby dismissed. The court files that were availed to this court for the purpose of the hearing of this application are ordered return to the respective Magistrate’s Courts. It is so ordered.

DATED AT NAIROBI THIS 30 DAY OF SEPTEMBER 2020

HON. L. KIMARU

JUDGE