



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.E003 OF 2020**

**ISAAC IBREIN ROBUN.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Isaac Ibrien Robun is facing **terrorism related charges** under the **Prevention Terrorism Act 2012**. The Applicant has further been charged with **offences related to citizenship** under both the **Penal Code** and the **Kenya Citizenship and Immigration Act**. In all these charges, the Applicant has pleaded not guilty. Trial has already commenced. Infact, the prosecution has already closed its case. The trial court is waiting to receive submissions from the Applicant in No Case to Answer stage of proceedings. During the entire trial, the Applicant made three applications to be released on bail pending trial. All applications were declined. In the last application made before the trial court on 14<sup>th</sup> April 2020, the court ruled that the trial had reached such an advanced stage that it would be inadvisable for the court to grant the Applicant bond pending trial. The Applicant was aggrieved by this verdict.

He filed an application before this court under **Sections 362 and 364** of the **Criminal Procedure Code** seeking orders of revision of that decision. The grounds in support of the application are essentially the following: that the Applicant's health situation has deteriorated while in remand custody; that the Applicant suffers from various ailments including diabetes, gastritis, and hypertension; that due to the COVID 19 Pandemic, the Applicant has been unable to access specialized medical treatment at Kenyatta National Hospital; that he has the constitutional right to be presumed innocent until found guilty by a court of law; that the trial court had accorded him differential treatment by declining to grant his several requests to be released on bail pending trial yet in his assessment, the prosecution had not placed before the court compelling reasons for the trial court to deny him bail. The Applicant states thus:

***“The circumstances for denial of bond did not amount to compelling reasons and this far, the circumstances of the case have changed drastically, and find that it was not judicious, it was incorrect hence irregular and proceed to admit the Applicant on extremely Lenient bond terms considering the long stay in prison and his humble background (being an orphan and driver).”***

The prosecution opposed the application. It is the prosecution's assertion that the position that prevailed when the Applicant was first arraigned before the trial court and was denied bail still applies; that the Applicant was a flight risk in view of the serious nature of the charges that he is facing; that being a citizen of a foreign country he is likely to abscond from the jurisdiction of the court. In addition, the prosecution states that it has already called its witnesses and closed its case. The trial is about to be concluded. It would therefore not serve the interests of justice if the Applicant is granted bail at this latter stage of the trial.

During the hearing of the Application, this court heard oral submissions by Mr. Chacha for the Applicant and by Mr Kiarie for the prosecution. This court has carefully considered the said submission in light of the application and the responses to the application that are on record. That the Applicant has the constitutional right to be granted bail pending trial is not in doubt. **Article 49 (1)(h)** of the **Constitution** says so. However, there are compelling reasons. What constitutes compelling reasons has not been defined by the Constitution. The court is guided by the **Judiciary Bail and Bond Policy** and various decisions of the court including the amendments to the **Criminal Procedure Code**, specifically **Section 123A** of the **Act**.

In the present application, the Applicant's plea to be released on bail pending trial is essentially on the basis of ill health. The Applicant told the court that he suffers from various ailments which cannot be adequately medically attended to while he is in remand custody. The Applicant states that since the COVID 19 pandemic became a reality, he has been unable to be attended to at Kenyatta National Hospital where he used to attend clinics. In that regard, he urged the court to release him on bail pending trial so that he can be medically attended to in a private medical facility. The prosecution is not persuaded by this argument. It is the prosecution's case that any ailment suffered by the Applicant can be adequately treated by prison authorities. The prosecution urged the court not to release the Applicant on bail pending trial because the trial is virtually at its end.

This court agrees with the prosecution that the mere fact that the Applicant has a medical condition is not sufficient reason for this court to release the Applicant on bail pending trial. This court takes judicial notice of the fact that there are adequate medical facilities in prison to treat ailments that Applicant is suffering from. As confirmed by the Applicant, in circumstances where the prison medical facilities are inadequate, the Applicant has been taken to Kenyatta National Hospital for appropriate intervention. While it is conceded that the COVID 19 Pandemic has brought challenges in management of other diseases such as the ones the Applicant is ailing from, this court is of the considered opinion that no case has been made for this court to intervene by releasing the Applicant on bail pending trial.

Further, the case is already at an advanced stage. The trial court will soon pronounce the guilt or innocence of the Applicant. The prosecution has already closed its case. The trial is at the stage where the Applicant is expected to file his submission on No case to Answer. The Applicant has the opportunity to deconstruct the prosecution's case against him. This court agrees with the trial court that it cannot consider the application for bail pending trial at this latter stage of the proceedings unless the trial court forms the opinion that from the evidence

already adduced by the prosecution, a conviction cannot ensue under any circumstances.

In the premises therefore, the Application herein lacks merit. It is dismissed. The trial courts file is ordered returned to the court to enable the trial to be concluded.

It is so ordered.

**DATED AT NAIROBI THIS 28<sup>TH</sup> DAY OF OCTOBER 2020**

**L. KIMARU**

**JUDGE**