



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 10 OF 2019

(Coram: Odunga, J)

(CONSOLIDATED WITH MACHAKOS CRIMINAL CASE NO. 15 OF 2019)

REPUBLIC.....PROSECUTOR /RESPONDENT

-VERSUS-

1.PAULINE MAISY CHESANG.....1ST ACCUSED

2.RICHARD LORUNYEI MORU.....2ND ACCUSED

3.LAWRENCE METAYO LEMPESI.....3RD ACCUSED

4.PETER MAUNDU MBITHI.....4TH ACCUSED

5. NUNO HASSAN JILLO.....5TH ACCUSED

RULING

1. On 14th June, 2019, I delivered a ruling in this matter in which I ordered that the accused persons may be released upon deposit into court of a cash bail in the sum of Kshs 500,000.00. In addition, they were to provide two sureties of Kshs 1 Million each to be approved by the Deputy Registrar of this court and were to deposit all their travel documents including their passports which they hold – if they have any.

2. Subsequently, the court reviews the said order and set aside the requirement for the cash bail with the other terms remaining as they were.

3. When the matter went for approval of the surety of the 5th accused, the Deputy Registrar declined to approve the persons presented on behalf of the 5th accused, finding that the two persons who wanted to stand surety for him did not know the said accused and that they only knew the accused's sister.

4. The matter before me is seeking that the court revises the said decision.

5. I have considered the record as well as the submissions made. It is true that the objective of imposing terms for the release of an accused on bond is primarily to ensure that the accused appears at the hearing. Therefore, it is not the property furnished as security that determines whether or not the surety ought to be approved but the assurance from the person standing surety that is of utmost importance. It follows that on occasions an accused may even be released on the basis of the surety's standing in society without necessarily offering security. It is not unheard of for accused persons to for example be released upon an assurance of a local assistant chief or even an identity card of the surety.

6. Accordingly, the requirement that some property be placed at the disposal of the court is just meant to give the court assurance that the surety takes his/her responsibility of ensuring that the accused attends court seriously. In other words, the mere fact that the surety is a person of means does not necessarily qualify him/her to stand surety for the accused unless he/she satisfies the court that he/she will ensure the accused attends court.

7. It therefore follows that the surety must satisfy the court about his acquaintances with the accused to enable the court believe that in the event that the accused absconds, he will assist the court in apprehending the accused.

8. In this case from the records, it is clear that the persons presented as sureties on behalf of the 5th accused stated that they only knew the sister of the accused. One wonders of what help they can be to the court in the event that the said sister is for some reason unavailable.

9. In the premises, I am unable to interfere with the decision of the Deputy Registrar and decline to interfere therewith.

10. It is so ordered.

G. V. ODUNGA

JUDGE

Read, signed and delivered in open Court at Machakos this 30th day of July, 2019.

D. KIMEI

JUDGE

Delivered in the presence of: