



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

MISC.CR.APP.NO.15 OF 2018

PATRICK ARUBE NYABERA.....1ST APPLICANT

JAMES KIMANI NJOKI.....2ND APPLICANT

- V E R S U S -

REPUBLIC.....RESPONDENT

R U L I N G

The two applicants Patrick Arube Nyabera and James Kimani Njoki were jointly with the offence of Robbery with violence contrary to Section 296(2) of the Penal Code.

They were given bond of Kshs.650,000/= with 2 sureties of the same amount. They filed an application on 6/7/2018 seeking variation of the bond terms. The 1st applicant claims that he is not able to afford two sureties and prays for one surety. The 2nd applicant prays that he be released on Cash Bail as he is not able to raise sureties.

I have generally perused the file. Unless it was not recorded, I have not seen any record of an application for variation of the bond terms made before the trial court.

Ms. Rugut opposed the said application for reasons that the applicants are facing other cases in other courts, in Kericho, Bomet and Nairobi. She urged the court to decline the request.

In reply to the learned counsel, both applicants indicated that the other cases they were facing have either been withdrawn or finalized. There was no evidence of the judgments save for the committal warrants which indicated that the cases had been finalized.

Bond is a Constitutional right that is guaranteed under Article 49(1) of the Constitution. The trial court did exercise its discretion and granted the accused persons bond of Kshs.650,000/= considering that they faced several cases and as a result, this case has taken so long to prosecute because the applicants would be before other courts forcing the trial court to adjourn this matter. The other cases are now over.

Having considered all the other factors, this court hereby varies the bond terms. Each applicant may be released on bond of Kshs.500,000/= with one surety of the same amount. Due to the seriousness of the offence, I am reluctant to grant Cash Bail.

The applicants also seek to be accorded legal representation. Though the Constitution guarantees the right to fair hearing to include legal representation, the State has not yet provided for pro bono services for everyone. Legal aid is only availed to murder suspects in the High Court and children offenders.

So far there is no legal representation for offences of robbery with violence. Even if I were to grant the order, it would be in vain.

Dated and Signed at NYAHURURU this 26th day of November, 2018.

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R.P.V. Wendoh

JUDGE

PRESENT:

Ms. Rugut for the State

Soi – Court Assistant

Applicants

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present