

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 361 OF 2017.

HABUMUGISHA IDEPHONSE.....APPLICANT.

VERSUS

REPUBLIC.....RESPONDENT.

RULING.

1. Habumugisha Idephonse, hereafter the Applicant, brought the present revision application by way of Notice of Motion filed on 27th November, 2017. In it he urges the court to revise its order on bond and thereby reduce the cash bail of Kshs. 500,000/- that it granted in Misc. Criminal Application 192 of 2017. The grounds upon which the application was premised was that the Applicant had failed to raise the amount in question.

2. The application was supported by an affidavit sworn by Applicant in which he beseeches the court to reduce the cash bail to Kshs. 50,000/- which he could afford. His swore that his family had tried to post bond but could not do so as they lacked the necessary “papers” to stand for him. He deposes that his family was completely dependent on him financially and given that his wife was jobless his continued incarceration was occasioning great suffering to his family. He urged the court to consider this application on the basis of the fact that he is a responsible person and lacks foreign links that would lead to his jumping bail with the intention of absconding the trial. He swore that he would undertake to attend all the hearings without fail.

3. Ms. Sigei for the Respondent in opposing the application submitted that the bond granted was commensurate with the offence, the Applicant having been charged with the offence of robbery with violence and that the value of the items he allegedly stole being Kshs. 3 million. Further, that the Applicant is a foreigner, being a Rwandese national. She reminded the court that it had already reduced the Applicant’s bond terms and that the same should not be reduced further.

4. In reply, the Applicant submitted that it was true that his bond terms had been revised but was entirely incapacitated to afford it.

5. The pre-bail report was prepared by E. M. Tulele, a probation officer, and in it she submitted that after interviewing the Applicant and his sister-in-law she learnt that the Applicant was born in Rwanda and that after the Rwanda Genocide of 1994 he moved to Kenya where he worked as a driver. That he married Mary Moraa Ayienda, who is now deceased and they were blessed with two children who are both in primary school, Standard 8 and 3 respectively. That the Applicant is in sound health, has a clear criminal record and does not abuse drugs. When it came to the Applicant’s character she found that he commands respect from his family due to his humility and the fact that he was a prayerful and church-going person. That he exhibits a humble demeanor and has no negative tags in the community. With regard to the Applicant’s ability to post bail or bond she submitted that his family was subsistence farmers in Rwanda, of little means and could not meet any bond terms set out as they lacked property to deposit. Further, that the Applicant’s sister-in-law had submitted that she could raise Kshs. 100,000/- for his bail but could not meet the current bail amount of Kshs. 500,000/-. The sister-in-law submitted that she understood the severity of the charges against the Applicant and she was willing to act as a surety to ensure that he was not a flight risk.

6. It is not in contention that the Applicant has been granted bond and bail which currently stands at Kshs. 800,000/- and Kshs. 500,000/- respectively. The court is under a duty to ensure that the conditions attached to the admission to bond or bail are reasonable. The court after considering the pre-bail report finds that the Applicant’s right to bail is fettered by the imposition of stringent terms that he cannot meet. His antecedents do not reflect a person likely to jump bail terms. After all, his sister in law undertakes to ensure that he attends court when and if required to. I find that this is a case deserving of bond reduction to some tenable terms. I accordingly further reduce the bond terms to either a cash bail of Ksh. 150,000/ or a bond of Ksh. 200,000/. The surety in the bond shall be the Applicant’s sister in law one Margret Kwamboka Ayenda. The surety shall be assessed by the trial court. It is so ordered. Further, if the Applicant pays bail, his sister in law Margret Kwamboka Ayenda shall leave her personal details with the trial court including her identity card for purposes of contact by the court if need arises. It is so ordered.

DATED and DELIVERED this 17th day of April, 2018

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant present in person

2. M/s Sigei for the Respondent