

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 239 OF 2017

STEPHEN NJOROGI MACHARIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant herein has approached this court by way of Notice of Motion dated 17th August, 2017. He prays that the court reviews the bond terms issued by the trial court. The application is supported by an affidavit sworn by the Applicant in which he deposes that he is charged with two counts; Stealing contrary to Section 268(1) as read with Section 275 of the Penal Code and Handling stolen property contrary to Section 322(1) as read with Section 322(2) of the Penal Code. That upon pleading "Not Guilty" to both offences the trial magistrate granted him a surety bond of Kshs. 2,000,000/- with no alternative of a cash bail but that this was later reviewed to Kshs. 500,000/-. He adds that to date he has not managed to raise the amount in question. He beseeches the court to reduce the surety amount to Kshs. 100,000/- with an alternative cash bail of Kshs. 20,000/- which he is in a position to raise. Further, that he was the sole breadwinner to his young family who were wholly dependent on him and that in his absence they were suffering. That his continued stay in custody was having irreparable effects on his family and given that he had no foreign links the court should grant his prayer as he has no intentions to abscond. He undertakes to attend all hearings until the case is heard and determined.

2. Ms. Sigei for the Respondent submitted that the Applicant's bond was reduced to Kshs. 500,000/- without the alternative of cash bail. She opposed the application as the offences with which the Applicant was charged were serious. Furthermore, the Applicant was allegedly found in possession of a pistol which he is alleged to have stolen. She submitted that if cash bail was granted the Applicant may abscond. Finally, that the Applicant had not informed the court what efforts he had made to secure the sureties.

3. In reply, the Applicant submitted that he was a parent and could not get a surety as their property did not have a title. That he has been in remand for 2^{1/2} years and that two witnesses had testified with another three yet to be called.

4. The court ordered that a pre-bail report be filed which was confirmed on 9th April, 2018. The pre-bail report was made by E. M. Tulele and took into account information from the court file as well as interviews with the Applicant and his sister-in-law. It was found that the Applicant was one of 11 children born in Laikipia County who dropped out of school in Form 2 due to financial problems. That he thereafter moved to Nairobi where he started working as an electrician. Further, that he is married with two children while he has sired another child out of wedlock. That he is of good health, has no previous criminal record and does not abuse any illegal substances. The interview with the sister-in-law, Shanice Achieng of telephone No. 0796180594 disclosed that they lacked a title deed as the existing one was held by the family and had many beneficiaries to it. Further, that she could only raise Kshs. 20,000/- as cash bail as the family was not financially endowed to help him raise the amount in question.

5. The court has considered the submissions of the parties and found particularly telling the fact that the 1st Accused in that matter, Shanice Achieng whose name is similar to that of the Applicant's sister-in-law had her bond terms reviewed to Kshs. 50,000/- cash bail due to her medical condition. It appears that she underwent a surgery during the trial which was part of the grounds upon which the court allowed the review.

6. The court has the power to review bond and bail conditions pursuant to Section 123(3) of the Criminal Procedure Code. The bond terms set out against the Applicant are Kshs. 500,000/- bond with a surety of a similar amount. The Applicant was charged alongside three others and he is the only one in remand. The court is alive to an accused's right to bail as enshrined under Article 49(1)(h) of the Constitution. It demands that the conditions for bail should be reasonable so as to safeguard the freedom of an accused. Bail or bond can be denied only if there are compelling reasons. In the present case, it has not been demonstrated whatsoever that the Applicant is a flight risk or will abscond court or interfere with witnesses if released on reasonable cash bail.

7. I do accordingly find that this is a case that mitigates the request made to this court. I reduce the bond to Ksh. 300,000/ with one surety of a similar amount. In the alternative, the Applicant shall pay a cash bail of Ksh. 80,000/-. The surety must be one Shanice Achieng who gave an interview to the Probation officer to be assessed by the trial court.

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*