

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 40 OF 2014

REPUBLIC.....PROSECUTION/ RESPONDENT

VERSUS

PATRICK MUKETHA.....1ST ACCUSED/APPLICANT

ALFRED MUNYUA.....2ND ACCUSED

RULING

1. This application is brought by the 1st applicant by way of a chamber summons dated 2nd March 2018. The applicant seeks for orders to have his bond terms varied or reviewed.
2. The grounds upon which the summons is grounded are set out in the body of the summons and the affidavit sworn by Patrick Kirimi Muketha, the Applicant, on 2nd March 2018. He avers that he was released on a bond of Kshs. 1 Million with two sureties of similar amount, who are his mother and father. The other accused was released on lesser terms and the second surety was allowed to deposit Kshs. 50,000/= because he was unable to raise the bond. That 2nd surety, his mother, wishes to have her title released to her so that she can sub-divide her land to distribute to her children. She is ready to deposit cash bail in place of the title deed. He asserted that he will faithfully attend court until the case is concluded.
3. The application was opposed by the prosecution. Mr. Namiti, Learned Counsel for the state told the court that at the time the bond was fixed, there were serious allegations of the 2nd accused interfering with witnesses. This was what led to the strict terms of the bond being imposed.
4. **Article 49 (1) (h) of the Constitution** vests discretion upon the court to judge whether the reasons advanced before it amount to compelling reasons upon which an applicant may be denied bail or bond.
5. Before the accused persons' bond terms were reinstated, there were allegations of interference of which they were warned against by the court and to keep away from the prosecution witnesses.
6. In the case of **Republic v Milton Kabulit & 6 Others [2011] eKLR** it was held:-

“I understand the principal purpose for the grant of bond or bail is to reinforce cardinal principle of the criminal law procedure as is enshrined in Section 40(2)(a) of the Constitution that an accused is presumed innocent until the contrary is proved, and unless there are compelling reasons for not doing so, (S. 49(1)(h)), pending such trial to be released on bond or bail.”

7. If there are no compelling reasons then bail or bond should be granted on reasonable terms. In **Republic v Nicholas Muasya Bernard & 3 others [2016] eKLR**, the court held:-

“For bond or bail to regain its usefulness it must be based on terms which are reasonable and which make it attainable to the accused persons. If terms of bail or bond are made unreasonable harsh or unattainable it could amount to denial of the very right that is guaranteed by the constitution.”

8. According to Mr. Namiti the serious allegations of interference were against the 2nd Accused. The prosecution made no mention of the 1st accused taking into consideration he is the one who wishes to have his terms reviewed.
9. In view of the foregoing, I find no reason why the application should not be allowed. However, for equality, I will impose the very same terms like those imposed for the other two accused. The bond terms are varied. The 1st accused may be released on a cash bail of KShs. 50,000/- with a surety of Kshs. 300,000/-.

DATED and **DELIVERED** at Meru this 30th day of May, 2018.

A. MABEYA

JUDGE