



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

MISCELLANEOUS CRIMINAL APPLICATION NO.70 OF 2017

STEPHEN GITAU KARANJA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By his Notice of Motion filed on 8th September, 2017 the Applicant seeks the consolidation of criminal cases which were pending before the lower court, namely, Chief Magistrate's Kiambu Criminal Case nos. **726 of 2017, 738 of 2017, 739 of 2017 and 778 of 2017**. He also seeks variation of bail terms since the cases are consolidated, to enable his release on a bond of shs. 100,000/- or in the alternative a cash bail of Shs. 50,000/-.
2. The Applicant swore an affidavit in support of the Motion, deponing *inter alia* that he is unable to meet the various bail terms in the cited matters, hence his plea for consolidation. He contends that his health has been adversely affected by his continued incarceration in remand prison.
3. The Director of Public Prosecutions filed grounds of opposition to the Motion, citing the serious nature of the offences facing the Applicant, all arising from different transactions and periods, making the cases unsuited for an order for consolidation; and that the prayer for consolidation of bail terms has no legal basis. The Director of Public Prosecutions supports the bail terms in the respective files.
4. The Applicant in arguing the Motion relied on the matters in his affidavit. In response to the grounds of opposition raised by the Director of Public Prosecutions, the Applicant asserted that he has correctly moved the court under Article 49 of the Constitution and the law. However, he clarified that he was not seeking consolidation of the cases, but only that he be released on a reasonable singular bail arrangement in all the cases, to enable him prepare for the trial.
5. Mr. Kinyanjui for the Director of Public Prosecutions reiterated the grounds of opposition. In his view, the bail terms in the subject cases are reasonable in light of the offences facing the Applicant. He observed that no evidence had been tendered to support the Applicant's alleged inability to comply therewith and the Applicant's refusal to proceed with the trials before the lower court. He pointed out that **Criminal cases no. 726,738 and 739** are all before the same court and the fact that Applicant had in his motion sought consolidation of the four cases, to which he is opposed as each of the matters arose in different circumstances. In a rejoinder the Applicant reiterated his desire that he cases facing him be heard separately to avoid prejudice.
6. The court has duly considered the material canvassed in connection with the instant application which, on the face it, was expressed to be brought under article 50(2) of the Constitution and sections 362 and 364 of the Criminal Procedure Code. The Applicant has unequivocally disavowed the prayer for consolidation of the Criminal cases contained in this motion. The court therefore deems the prayer as withdrawn. In any event, a perusal of the respective lower court files indicates that the charges relate to different complainants, dates of offence and may involve different investigating officers and originating police stations. Hence it would not be viable in the circumstances to consolidate them. And the Applicant himself is wary that such consolidation would be prejudicial to him.
7. With regard to the prayer for variation and consolidation of bail terms, I note that in **Criminal case No. 726/17** the Applicant is charged with two counts, namely, Robbery contrary to section 296 (1) of the Penal Code and attempted Rape contrary to Section 4 of the Sexual Offences Act. He was released on a bond of Shs. 300,000/- and one like surety, or alternatively, a cash bail of Shs. 200,000/-. In **Criminal case no. 738 of 2017** he faces a charge of Robbery with violence Contrary to Section 296(2) of the Penal Code, and was granted bail/bond in the sum of Shs. 500,000/- and a surety in like sum. In **Criminal case no. 739 of 2017** the Applicant is charged with Robbery with violence contrary to section 296(2) of the Penal Code and Rape contrary to section 3(1) as read with Section 3(3) of the Sexual Offences Act. He was released on a bond of Shs. 1 million and one surety in like sum.
8. In **Criminal case No. 778/17** the Applicant is charged with Robbery with violence contrary to section 296(2) of the Penal Code and attempted Rape contrary to Section 4 of the Sexual Offences Act. He was granted bail on terms that he executes a bond of Shs. 300,000/- and provides one surety in like sum. I further note that the complainants in all the cases are female, and offences allegedly occurred in the period between February and May 2017.

9. There can be no doubt that the Applicant faces very serious charges. He is however presumed innocent until otherwise proven. The Applicant has emphasized his right to bail under Article 49 of the Constitution. Bail terms are set to ensure the attendance of an accused person for his trial. Under Article 49 of the Constitution, the Applicant is entitled to reasonable bail terms. And while there is no express provision in the Constitution or the Criminal Procedure Code specifically providing for consolidated bail terms, in appropriate cases, such order may be made in furtherance of the Accused's rights under Article 49 and 50 of the Constitution. Each case must be considered on its merits and circumstances remembering always the presumption of innocence in favor of the Applicant. But also the rights of the complainants under Article 50(1) and the Victims protection Act. There will be cases where it may not be prudent or even practical to allow a single bail term to apply in separate trials.

10. Having reviewed the matter before me, I am of the view that a consolidated bond in respect of all four cases may not be prudent, or even helpful to the Applicant, in light of the nature of the charges he faces and which fact needs to be borne in mind. Accordingly, I would grant the application for consolidation of bail as follows:-

a) With regard to **Criminal cases No. 739/2017** and **778/of 2017**, the bail terms in the former, namely bond of Shs. 1 million with one surety in like sum will suffice as consolidated bail terms to cover both matters. In the alternative, the Applicant may be released upon depositing cash bail in the sum of Shs. 250,000/- (Two hundred and fifty thousand).

b) With respect to **Criminal cases No. 738/17** and **726/2017**, the Applicant may be released on terms that he executes a personal recognisance in the sum of Shs. 500,000/- and furnishes a surety in like sum. In the alternative, he may be released on a cash bail of Shs. 150,000/- (One hundred and fifty thousand).

11. I have noted that the subject cases have severally been listed for hearing but been adjourned for various reasons, including today's decision. The lower court files are herewith returned with a direction that they be listed before the Chief Magistrate, Kiambu on 4th July, 2018 for fixing of early hearing dates. A copy of this ruling is to be placed in each of the four files for purposes of certification of orders herein to the respective courts.

Delivered and signed at Kiambu this 25th Day of June, 2018.

C. Meoli

JUDGE

In the presence of:

The Applicant

Miss Ndombi for the Director of Public Prosecutions

Kelvin Court Assistant