



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CR. REVISION NO.425 OF 2018

JOSEPH MUTISYA.....1ST APPLICANT

FREDRICK MUTISO.....2ND APPLICANT

GEOFFREY MUIA.....3RD APPLICANT

FREDRICK KYUMWA.....4TH APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicants, Joseph Mutisya, Fredrick Mutiso, Geoffrey Muia and Fredrick Kyumwa have been charged before the Makadara Chief Magistrate's Court with **robbery with violence** contrary to **Section 296(2)** of the **Penal Code**. This is in **Makadara Chief Magistrate's Court Criminal Case No.465 of 2018**. It is alleged that on 12th January 2018 along Mombasa Road, the Applicants, jointly with others not before court, robbed Widah Omari Nasta of Kshs.2,818,000/- and at the time of such robbery, used actual violence to the said Widah Omari Nasta. When the Applicants were arraigned before the trial magistrate's court, they pleaded not guilty to the charge. They applied to be released on bail pending trial.

The application was refused essentially on the ground that they had committed other offences while they were out on bond in respect of other charges that they were facing before other courts. The material part of the Ruling delivered on 12th March 2018 (E. Ominde – CM) stated thus:

“The charge of robbery that the Accused persons are facing before this court, and indeed, the same being that charges (sic) that they face in the three other courts is no doubt a serious charge. It carries the death penalty which is the ultimate punishment available for serious criminal offenses. As I have already demonstrated above, notwithstanding the presumption of, innocence the likelihood of an accused committing another crime while out on bond, the commission of another crime, or the aiding and abating of the commission of another crime while out on bond is a compelling reason sufficient to warrant the denial of an accused bond.”

The Applicants were aggrieved by this decision. They have applied to this court seeking to have the said decision revised.

In an affidavit sworn by Joseph Mutisya on behalf of himself and his co-applicants, he deponed that the assertion by the trial court that they had committed other offences while on bond was not true because from the time they were arrested and charged with the first case before the Meru Chief Magistrate's Court on 29th January 2018, they had not been released on bond. They have been in remand custody since then. The 1st Applicant explained that after being charged before the Meru Chief Magistrate's Court, they were brought to Thika where they were charged before the Thika Chief Magistrate's Court before they were transported to Mombasa and charged before the Mombasa Chief Magistrate's Court.

In all these cases, they were granted bail pending trial. They were granted bail on various terms which they have yet to fulfill. The 1st Applicant further deponed that they were brought to Nairobi where they were charged before the Makadara Chief Magistrate's Court, resulting in denial of bond by the trial court. He averred that all the charges that have been laid against them in various courts were instituted one after another, and during the entire period, they had been in remand custody. It was not possible for them therefore to allegedly commit

other offences while they were in remand custody. The Applicants annexed copies of proceedings of the various courts in support of their application for revision of the decision of the trial magistrate's court to deny them bail pending trial.

During the hearing of the application, this court heard oral rival submission made by Mr. Nyachoti for the Applicants and by Mr. Momanyi for the State. Mr. Nyachoti reiterated the contents of the application and their supporting affidavits. He urged this court to allow the application. Mr. Momanyi did not oppose the application. However, he urged the court to impose stringent bond terms.

This court has carefully considered the facts of this application. It was clear to this court that the decision rendered by the trial court in denying the Applicants bail pending trial was based on an apparent error in appreciation of the facts of the case. The decision was made on the basis that the Applicants had committed other offences while they were out on bond. The true position is that the Applicants have been in remand custody since they were first arrested at Meru on 26th January 2018. They have subsequently been charged, after that date, with similar offences of robbery with violence before other courts. In all the other courts, the Applicants have been granted bail pending trial. This court therefore holds that the compelling reason given by the trial court in denying the Applicants bail pending trial has been established to have been an apparent error.

In the premises therefore, since the State is not opposed to the Applicants being released on bail pending trial, this court revises the decision of the trial court and substitutes it with a decision of this court granting the Applicants bail pending trial on condition that the each Applicant executes a bond of Kshs.1,000,000/- with one surety of the same amount. In the alternative, each Applicant can be released on bail upon depositing a cash bail of Kshs.400,000/-. It is so ordered.

DATED AT NAIROBI THIS 21ST DAY OF JUNE 2018

L. KIMARU

JUDGE