



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA KIAMBU

CRIMINAL REVISION NO. 340 OF 2018

MICHAEL MITHAMO GATERE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Michael Mithamo Gatere the Applicant herein faces criminal charges in nine separate cases in the Chief Magistrate's Court at Thika. These are Thika Chief Magistrate Criminal case No's 2780/18, 2781/18, 2782/18, 2783/18, 2784/18, 2844/18, 2863/18, 2864/18, and 2865/18. In all the cases, the Applicant faces at least one charge of Obtaining money by false pretences contrary to Section 313 of the Penal code. In Criminal Case No. 2864/18 (two counts of Obtaining money of Obtaining money by false pretences); and in Criminal Case No. 2863/18 he faces four counts of Obtaining by false pretences. In Criminal Case Nos. 2780/18 and 2781/18 the Applicant faces additional charges of issuing a bad cheque contrary to **Section 316A** of the Penal Code, Procuring execution of a document by false pretence contrary to **Section 355** as read with **Section 349** of the Penal Code, and Making false acknowledgement of Deeds contrary to **Section 383** as read with section 36 of the Penal Code.

2. The Applicant faces a total of 13 counts of Obtaining money by false pretences contrary to **Section 313** of the Penal Code. The period of offences spans between 2012 and 2016, while amounts allegedly obtained in individual counts range between sh. 140,000/- to KShs. 500,000. In all the matters, the applicant has been granted bail on differing terms, ranging from bond in the sum of KShs. 200,000/- and a like surety, to KShs. 2 million with the like surety.

3. On 29th May, 2018 through the from of **Ishmael and Co. Advocates** the applicant sought two prayers, namely, the review of the bail terms and a consolidation of the bail terms in respect of all cases facing him. Citing **Articles 49** and **50** of the Constitution, the applicant terms the bail terms as punitive and a negation of the right to bail and presumption of innocence. Because, he says, the large number of sureties required are difficult to procure.

4. In grounds filed in opposition to the application for review of bail terms, the Director of Public Prosecutions asserts that the application is without merit and that the prayer for consolidation of bail terms is untenable in light of the differing transactions and dates of alleged offences. Moreover, the Director of Public Prosecutions asserts the application is without legal basis and no evidence has been tendered to prove the applicant's inability to raise sureties.

5. The application was canvassed by way of written submissions. The applicant restates the right to bail and purposes of bail and submits that the bail terms in his cases are not proportionate to the nature of the offences preferred against the applicant, and amount to a curtailment of the right to bail. More so, as the Applicant is entitled to a presumption of innocence and that bail ought not to be pegged on the amounts allegedly obtained. Thus he urges a reduction of the bail amount. His arguments is that the circumstances of the case call for the consolidation of the bail terms, citing the fact that all the cases have been filed in the same court by three police stations within the same region. He relies on the decision of Ngenye – Macharia J in **Martin Murathi Muriria v Republic (2016) eKLR**.

6. For his part, the Director of Public Prosecutions argues that bond terms must be commensurate with the offence charged, citing the case of **Khalif Billow v Republic (2017) eKLR**. His position is that the bail terms are not excessive and that there is no evidence to prove the applicant's inability to raise the required sureties. Referring to the various circumstances attaching to each case, including the complainants, dates of offences and land parcels involved in the alleged fraud, the Director of Public Prosecutions opposes the consolidation of bail terms. That such consolidation would raise practical difficulties in the administration of the bail terms. The case of **George Kamau Ndung'u and 3 others v Republic (2013) eKLR** is called to aid.

7. The court has considered all the material canvassed in respect of the application. There is no gain-saying the fact that the applicant is entitled to be released on bond or bail, on reasonable conditions in the pendency of the trials. He is also entitled to the presumption of innocence throughout the trial (**Articles 49** and **50** of the Constitution). Whereas the trial court must consider the nature of the charges and other relevant matters in deciding whether to grant bail and what conditions to impose, it must also bear in mind that the accused person is presumed innocent until proven otherwise.

8. Hence the caution in **Watoro v Republic (1991)KLR 220** as cited by **Achode J** in **George Kamau's** case:-

“What I think is important for the court to bear in mind, and reason for the caution to remember the presumption of innocence, is that, it would be wrong to leap to the conclusion that the accused was guilty because has been charged and decide the bail application on that basis.”

9. The ultimate purpose of bail is to ensure that the accused person will attend trial. Obviously, the more severe the likely punishment for the offence charged, the more likely that an accused may be tempted to abscond to avoid the eventuality of punishment. Therefore, in as much as the court must pay attention to the charges facing an accused person, it must be careful to give effect to the right to bail while determining what conditions to impose. If that does not happen, the terms imposed may well turn out to be effectively a denial of the right to bail.

10. The terms of bail must therefore not be pegged on any sums stated in the charge sheet alone but also the two key considerations that the accused person is presumed innocent during the trial, and where no compelling reasons are raised, to reasonable bail terms. Majority of the charges facing the Applicant herein are brought under section 313 of the Penal Code. They are misdemeanors even though it appears that a sizeable amount of money is alleged to have been obtained from the complainants in the material period. Because of the orders I will give in this matter, I do not consider it necessary to consider each and every count in order to determine if indeed the bail conditions in each case are punitive unreasonable.

11. I think it is a matter of common sense that an accused person facing nine separate cases may have an uphill task obtaining separate sureties in each of the cases. Care must be taken to ensure that the right to bail is not negated; at the same time, the complainants in the cases are entitled to be heard on their complaints, under **Article 50 (1)** of the Constitution. The court therefore ought to grant terms and conditions that ensure the accused's attendance of the trial. That does not mean, as the applicant herein seems to suggest, that it is upon him to dictate what conditions best suit him, or which sureties ought to be considered and approved. The court must balance one thing against another.

12. The application before me is not for the consolidation of the cases but the bail terms. However, it is tenable, for purposes of administration to group certain cases together for purposes of bail, based on the originating police stations, nature of offence, number of counts etc.

The charges in Criminal cases no. **2863/18, 2864/18, and 2865/18** were brought by **Juja Police Station**. There are several complainants in the cases. In each of the first two cases, the applicant was granted bail in the sum of KShs. 1 million and like surety. In Criminal 2865/18 there are three complainants. The Applicant was granted bond in sum of KShs. 2 million and like surety. In my considered view, no prejudice will be occasioned to the prosecution if the bail in respect of the three cases is consolidated at KShs. 2 million with one like surety. This means that the applicant will furnish one surety in respect of the criminal case numbers 2863/18, 2864/18 and 2865/18.

13. The balance of the cases, that is Criminal case nos. **2780/18, 2781/18, 2782/18, 2783/18, 2784/18** and **2844** originate from Ruiru Police Station. As much as it is onerous on the part of the Applicant to furnish sureties in each of these cases, it might also prove difficult for one surety to ensure that the applicant attends court on each occasion and honors his bail terms. In the event, which a surety bond seeks to preempt, the applicant were to abscond, the sole surety would be under great pressure to produce the accused persons in all the cases as would be required of him upon executing the recognizance. Secondly, in light of the multiple complaints in the six charges, the recognizance must be substantial enough albeit reasonable. In my considered opinion, it may not be feasible or prudent to consolidate the bond in respect of six different cases proceeding before different courts.

14. Thus, it is best that there be a requirement for more than one surety. For this purpose, the bail terms in respect of Criminal case no. 2780/18, 2781/18 and 2782/18 are consolidated so that the Applicant may be released in all of them upon executing a bond in the sum of KShs. 700,000/- and a like surety, which is the condition in place in Criminal case no. 2781/18.

15. With regard to Criminal case numbers 2783/18, 2784/18 and 2844/18, the bail terms are consolidated as follows. The applicant may be released upon executing a bond of Shs. 500,000/- and one like surety in respect of the three cases. Ultimately, this means that instead of furnishing nine different sureties, the Applicant will furnish three different sureties in respect of all nine cases, as follows:

- a) Criminal case 2863/18
- b) Criminal case 2864/18 Bond of Shs. 2 million with one like surety
- c) Criminal case 2865/18
- d) Criminal case 2780/18
- e) Criminal case 2781/18 Bond of Shs. 700,000/- and one like surety
- f) Criminal case 2782/18
- g) Criminal case 2783/18
- h) Criminal case 2784/18 Bond of Shs. 500,000/- and one like surety
- i) Criminal case 2844/18

It is so ordered.

DELIVERED AND SIGNED AT KIAMBU THIS 24TH DAY OF SEPTEMBER, 2018.

In the Presence of:

For the Applicant - Mr. Njuguna

For the Respondent - Mr. Maatwa

Court Clerk - Kevin

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C. MEOLI

JUDGE