



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU

CRIMINAL REVISION NO. 44 OF 2017

RUTH ACHIENG.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Background

This revision was brought by way of a letter dated 7.6.17 by C.O. Onyango advocate in the firm of Ms. Olel, Onyango, Ingutiah & Company Advocates for the applicant; seeking the following order:-

THAT The Honourable court do revise the order denying bail and substitute the same with an order directing the trial court to forthwith give bail on reasonable terms to the applicant

The brief background of this matter is that on 18.5.17; the applicant was charged with packaging of alcoholic drinks in unprescribed containers contrary to section 31(1)(2) of the Alcoholic Drinks Control Act No. 4 of 2010 and being in possession of unaccustomed goods contrary to section 200(d)(iii) of the East African Community Customs Management Act 2004.

The applicant pleaded not guilty to both charges. The prosecution then prayed that applicant's bond terms be enhanced on the grounds that she has previously been convicted of similar offence which she denied. The learned trial magistrate after hearing both parties directed that: -

- i. The case be mentioned on 28.6.17**
- ii. A pre-bail report be availed**
- iii. Applicant be remanded in custody until 28.6.17**

Upon those findings, the trial court did not grant bond to the applicant.

Determination

Bail is now a constitutional right. Article 49(i) (h) gives rights to any arrested person under the following terms:-

- 1. To be released on bond or bail on reasonable conditions pending a charge or trial, unless***

there are compelling reasons not to be released.

Section 49(2) states:-

“any person shall not be remanded in custody for an offence if the offence is punishable by a fine or by imprisonment for not more than six months”.

Section 124 of the Criminal Procedure Code provides:-

Before a person is released on bail or on his own recognizance, a bond for such & sum as the court or police officer thinks sufficient shall be executed by that person and when he is released on bail, by one or more sufficient sureties conditioned that the person shall attend at the time and place mentioned on bond and shall continue so to attend until otherwise directed by the court or police office.

It therefore follows that the purpose of bond is to secure the attendance of an accused person at the trial.

Section 123(3) gives the High Court the power to direct that a person charged before a lower court be admitted to bail or that bail required by a sub-ordinate court or police officer be reduced.

Article 165(6) of the Constitution of Kenya 2010 provides that the High Court has supervisory jurisdiction over the subordinate courts and over any person or body or authority exercising judicial or quasi-judicial functions and in sub-article (7) for the purpose of exercising the supervisory jurisdiction the High Court may call for the record of proceedings before any subordinate court or person, body or authority referred herein and may make any order or give any directions it considers appropriate to ensure the fair administration of justice.

In respect to criminal matters, the Criminal Procedure Code provides as follows:-

Section 362. The High court may call for and examined the records of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.

S. 364(1) in the case of a proceeding in subordinate court the record of which has been called for or which has been reported for order or which otherwise comes to its knowledge, the High Court may

(b) in the case of any other order other than an order of acquittal alter or reverse the order.

The issue which the court is therefore called upon to determine in exercise of both supervisory and revisionary jurisdiction is whether there was incorrectness, illegally or improperly with the decision herein in granting denying the applicant bond whether the principle of fair administration of justice was violated so as to be subject of revision?

In George AladwaOmvera v Republic [2016] eKLR, Wakiaga J cited VEERAPPA PILLAI v REMAAN LTD the Supreme court of India which says:-

“The supervisory powers is obviously intended to enable the High court use them in grave cases where the subordinate tribunal or bodies or officer acts wholly without jurisdiction or excess of it or in violation of the principles of natural justice or refuses to exercise jurisdiction vested in them or there is an apparent error on the face the record and such action, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide and large as to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decide what the proper view on the order be made.....”

As stated herein above, the grant of bail/bond is now a constitutional right which is only limited when there is a compelling reason to deny the accused his right. The courts have developed what they consider compelling reasons most of which have been stated in the Bail & Bond Policy Guidelines which must be considered fairly and within the law in exercising the discretion to grant bond.

Having set out the ruling of the trial magistrate herein above in full, I do not find any compelling reason upon which the applicant was denied bond.

I therefore find that there is manifested error or irregularity committed by the court to enable me interfere with the decision herein on bail. I therefore, hereby revise the order denying the applicant bail and substitute the same with an order directing the trial court to forthwith give bail on reasonable terms to the applicant. It is so ordered.

DATED AND DELIVERED ON THIS 19th DAY OF June 2017

T.W. CHERERE

JUDGE

Court Clerk – Felix

Appellant – N/A