



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPL. NO.98 OF 2017**

**OSMAN ABDI DAGANE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Osman Abdi Dagane is facing terrorism related charges that arose from the Garissa University College terrorist attack. The Applicant is being tried with others before the trial magistrate's court. They were denied bail pending trial. According to the prosecution, fifteen prosecution witnesses have already testified. Six are remaining. The prosecution will therefore soon close its case. The Applicant has applied to be released on bail pending trial, because in his view, the evidence so far adduced by the prosecution witnesses does not point to him as among those who were involved in the terror attack. The evidence adduced has in effect exonerated him from the crime. He therefore urged the court to consider this fact when determining his application. This is because he should not continue languishing in remand custody yet he is innocent. The prosecution opposed the application essentially on the ground that it is too late for the Applicant to make such application since the prosecution is about to conclude its case.

This court has carefully evaluated the rival arguments made by the parties to this application. It was clear to the court that the purpose of granting bail pending trial is to secure the attendance of the accused during trial. In the present case, the Applicant is facing serious charges that may result, if convicted, to a long custodial sentence. The prosecution has already produced before court most of the witnesses that it intended to rely on to establish its case against the Applicant. This court cannot accept the invitation by the Applicant to consider the merits or otherwise of the evidence that has already been adduced by the prosecution witnesses. That role remains with the trial court. If this court were to delve into the merits of the evidence that has been adduced by the prosecution witnesses, it would be interfering with the judicial independence of the trial court. This court's jurisdiction to consider the merits of whether or not sufficient evidence has been adduced to establish the guilt of the Applicant is restricted to when it will be considering that issue after the conclusion of the trial, and if the Applicant is convicted and files an appeal to this court.

The Applicant did not place convincing reasons to enable this court revise the decision given by the trial court denying the Applicant bail pending trial. The application herein lacks merits and is hereby dismissed. It is so ordered.

**DATED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JULY 2017**

**L. KIMARU**

**JUDGE**