

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.4 OF 2016

ARTHUR MUNGAI MUNGAI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant was charged alongside another in the Chief Magistrate's Court at Makadara with two counts of robbery with violence and a further count of gang rape. He pleaded not guilty to all the counts and the trial is on-going. He was released on a bond of Kshs. 1.5 million with two sureties of a similar amount. His plea to this court is that the terms of the bond were harsh as the court did not give him an alternative of cash bail. He is therefore requesting that this court intervenes and either grants him an alternative of cash bail or orders that he be released on a bond with one surety. He pleaded with the court that he is a family man with two children. His wife does not work and they live in a rental house. He is the sole bread-winner of the family and his continued incarceration in custody is detrimental to the well being of his family.

I have looked at the lower court proceedings and noted that the learned magistrate who took the plea did not give a justification on why he only preferred a surety bond as opposed to cash bail as an alternative. There was also no justification given on why the bond had to be supported by two sureties as opposed to one. Of course, this court bears in mind that the Applicant is charged with serious offences, but must not overlook the fact that an accused person is presumed innocent unless otherwise proved. It must also be borne in mind that in as much as granting bail is a constitutional right of an accused person, the same should not be too stringent as to negate the very purpose for which it is granted. More importantly is that it was not shown that the Applicant is a flight risk. This case presents such a scenario. In the circumstances, it is only fair that the court reviews the bond terms on record.

Accordingly, I set aside the terms of bond granted to the Applicant and substitute them with an order that the Applicant be and is hereby admitted to a cash bail of Kshs. 500,000/= or a bond of Kshs. One Million with one surety of a similar amount to be assessed by the trial court. I order that the trial file be forthwith remitted to Makadara Law Courts so that the trial can continue.

DATED and DELIVERED in Nairobi this **31st day** of **MAY, 2016**

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person

2. M/s Aluda for the Respondent