

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO. 231 OF 2016

NELSON OPIDO MULATI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application herein is for consolidation of bail terms granted in two separate criminal trials namely; Cr. Case No. 1311 of 2014 and Cr. Case No. 1280 of 2014. Both are pending for hearing before the Chief Magistrate's Court at Milimani but in different courts. Cr. Case No. 1311 of 2014 is pending before Court number 11 and the Applicant was released on a cash bail of Kshs. 200,000/= or a surety bond of Kshs. 400,000/=. In Cr. Case No. 1280 of 2014, he was released on a cash bail of Kshs. 2 million or a surety bond of Kshs. 5 million. The latter is pending before Court number 1. In that case, he is charged alongside others with two counts robbery with violence and various alternative counts of handling stolen goods. In Cr. Case No. 1311 of 2014, he is charged with house breaking and stealing of property whose total value is Kshs. 885,200/=.

In court, the Applicant submitted that both cases have been pending for the last two years and only one witness has testified in each of the cases. He is so far unable to raise the cash bail and get two sureties for the two separate cases. He pleaded that given an opportunity, he would be able to afford at least one surety. He told the court that at the time of his arrest, he had taken a loan but since his incarceration, the creditor has taken away his movable properties to redeem the loan. This has left him and his family destitute as a result of which his children are not going to school.

Learned State Counsel Ms. Akuja opposed the application stating that the offences with which the Applicant is charged in the two cases are different and are unrelated. The best he can do therefore is to ask for bond reduction.

There is no rule that if offences with which an accused is charged are unrelated bond cannot be consolidated. The test is whether after consolidation, any inconvenience could be occasioned to the court and the investigators. In the instant case, both trials are pending before Milimani Chief Magistrate Courts and the trial magistrates are within the same building. If bond approval documents are filed in both files, the courts would easily make a reference to them in confirming whether the accused has been released on bail or bond. The matters were also investigated within Nairobi and so no inconvenience will be occasioned to the investigators. It is also important to note that the main purpose for granting bond is so as to ensure that an accused attends court. In the present case, only one witness in the respect of each case has testified in the last two years. This means that it is not in the interest of justice that the Applicant continues to languish in custody. I am more minded by the fact that the Applicant is deemed innocent until proven guilty and therefore the stringent terms of bond negates his constitutional right to bond as envisaged under **Article 49(i)(h) of the Constitution**.

Having made this observation, it is my view that the Applicant's application should succeed and I allow the same. I consolidate the bond terms in respect of both Criminal Cases No. 1280 of 2014 and 1311 of 2014. The Applicant is hereby released on a cash bail of Kshs. 1 million or a bond of Kshs. 2 million with one surety of a similar amount to be assessed by Court No. 1. The approval bond term documents shall be filed in both trial files. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH JULY, 2016.

G. W. NGENYE MACHARIA

JUDGE

In the presence of;

1. Applicant in person.
2. M/s Kimuri for the Respondent.