



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 24 OF 2014

J M K & 9 OTHERS APPELLANTS

VERSUS

REPUBLIC RESPONDENT

RULING

In this criminal case involving ten accused persons, this court has already considered an application for bond pending trial and granted each of the accused bail on the following terms:-

1. Each of the accused will be released on his/her signing a bond of Kshs. 500,000/= with one surety of similar amount, or on payment of cash bail of Kshs. 200,000/=.
2. Each will keep the peace.
3. Each will not interfere with or threaten any witness or any potential witness.
4. Each will attend trial and every mention of the case.

A hearing of the case partly heard for further 23rd and 24th September 2015.

On 10th July 2015 however, Mr. Ngala for the accused persons filed an application by way of Notice of Motion for review of the bond terms for some of the accused persons. The said application dated 9th July 2015 was brought under Article 49 (h), 51, and 53 of the Constitution, and sections 186 and 187 of the Children Act 2001. The orders sought in the application are as follows:-

1. That the honourable court be pleased to review its orders dated 19th February 2015 granting the accused persons bond/bail pending trial.
2. That the honourable court be pleased to release the 5th and 10th accused persons on free bond pending trial.
3. That the honourable court be pleased to release the 6th, 7th, 8th and 9th accused persons on free personal bond pending trial.

The grounds of the application are that the 5th and 10th accused are minors who are school going and need to continue with their education during trial. That the 6th accused is the mother of the 3rd, 5th, 7th and 9th accused persons. That the 8th accused is the wife of the 3rd accused person and that she delivered a baby boy at the Garissa Remand on 5th March 2015. That the 9th accused person is a single mother who aspires to go back to school and enroll for a technical course to acquire skills that will enable her take care of her child whom she stays with at the Garissa Remand. That the minors and the ladies have been exonerated from the offences they are charged with by the 1st prosecution witness and are not likely to abscond if released on free bond. Lastly, that as the accused are members of one family, and as such releasing the

ladies on free bonds would enable them take care of other children left at home during trial.

When the application came up for hearing on 14th July 2015, Mr. Ngala made submission in support of the application in the absence of the accused persons.

Mr. Okemwa, learned prosecuting counsel submitted that the State was not opposing prayer 2 in view of the provisions of Article 53 (2) of the Constitution which enjoined courts to always consider the best interests, when dealing with children. He stated that prayer 3 was difficult for the State to concede to, as the court gave very favourable terms of bond. Counsel emphasized that the Children Officer had filed a report in court in respect of the two children.

I have considered the application, the grounds as well as submissions on both sides and the law. This court has already made its decision with regard to bond or bail pending trial. My perusal of the law has not revealed any statutory or constitutional provision which donates to this court the powers to review its own orders regarding bond.

I am however aware that various courts, especially magistrates courts where most bail/bond applications are made, have at times reviewed their own bond/bail terms. In addition the “Bail and Bond Policy Guidelines” published in March 2015 acknowledges review of bail/bond terms as part of the fair action by courts in the criminal justice system.

Having considered the facts and arguments placed before me, I am still of the view that the bail/bond terms handed over to the adult accused persons herein is very considerate. The evidence of one witness per se does not in my view determine a case. Therefore the fact that a witness has not implicated an accused person is not enough ground for review of bail/bond terms.

As for the children accused persons – **A M K and M K** – the Children Officer has filed a report dated 27th May 2015 that they are each aged 16 years. They are said to be school going. They are obviously children and our Constitution and the law requires that they be accorded favourable treatment that takes into account their best interests. On that ground therefore, I will review the bail terms and grant them free bond.

I thus allow the application with regard to the two children and grant prayer 2. They will however comply with the other earlier conditions for the bail/bond granted by this court.

Dated and delivered at Garissa this 27th day of July, 2015

GEORGE DULU

JUDGE