



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL REVISION NO. 76 OF 2013

1. HENRY KAMITI CHEGE
2. REUBEN NJUKA NGUNYU
3. PETER WANJOHI CHEGEAPPLICANTS

VERSUS

REPUBLICRESPONDENT

RULING

By way of a letter dated 23rd July, 2013 the three Applicants are seeking the review of a ruling dated the 28th day of June, 2013 rejecting their bond application.

The reasons for the rejection of bond stem from the affidavit sworn by the investigating officer PC Benson Korir who has deponed that the Accused persons have been arraigned in Court for the offence of attempted robbery with violence contrarily to section 297(2) of the Penal Code.

That the 1st Accused Peter Wanjohi Chege has been charged in another Court for the offence of preparation to commit a felony contrary to section 308(2) of the Penal Code. The third suspect Henry Kimiti Chege has been charged in Nairobi Court with the offence of shop breaking and stealing.

Further that there are other ongoing criminal investigations against the three suspects and that there accomplices are still at large.

The investigating officer was also requesting for time so as to arrange for the security of the witnesses.

The investigating officer also deponed that he had received information that the suspects if released would interfere with witnesses and lastly that the Accused persons are likely to abscond if released.

Article 49(i) (h) of the Constitution provides,

“An arrested person has the right to be released on bond or bail on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.

Some of the grounds to consider while granting or denying bond pending trial of an

Accused are

- 1. The nature of the charge**
- 2. The strength of the evidence that supports the charge**
- 3. The gravity of the punishment in the event of Conviction**
- 4. The previous criminal record of the Accused if any**
- 5. The probability that the Accused may not surrender himself for trial**
- 6. The likelihood of the Accused interfering with witness or may suppress any evidence that may incriminate him.**
- 7. The likelihood of further charge being brought against the Accused.**
- 8. The probability of guilt**
- 9. Detention for the protection of he Accused.**
- 10. The necessity to procure medical or social report pending final disposal of the case”.**

But the main one is whether the Accused would not surrender himself to court if released on bail.

It is noted that the applicants face a serious charge where two men were shot dead, but it is also noted that the law presumes them innocent unless found guilty. Two of them are facing other charges in other Courts. They were granted bonds in those cases but there are no allegations of absconding.

The investigating officer had asked for time within which to make arrangements for ensuring safety of the witnesses.

The affidavit of the investigating officer was sworn on 11th day of June, 2013.

Close to two months period has lapsed. That is sufficient time within which to make the arrangements needed.

I therefore, find there is reason to invoke section 362 of the Criminal Procedure Code. The orders contained in the ruling dated 28th June, 2013 rejecting the application for bond are hereby reviewed and in place substituted with orders for admitting each of the applicants to a bond of Ksh. 3 million with one surety of similar amount.

Ruling dated and delivered in open Court this 28th day of August, 2013

M. MUYA

JUDGE

28TH AUGUST, 2013

In the presence of:-

Alando for the applicant

Tanui for the state