



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**MISCELLANEOUS CRIMINAL CASE NO. 616 OF 2011**

**WILLIAM DAVID TETT.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

1. This is a Notice of Motion dated 25<sup>th</sup> November 2011 brought under **Section 123(1), (2) and (3)** of the **Criminal Procedure Code** and **Article 49(h)** of the **Constitution** of Kenya. In it the applicant **WILLIAM DAVID TETT** is asking this court to order for the reduction, variation and/or substitution of the bail terms imposed in **Cr. No. 1210 of 2011, Nairobi** to reasonable bond terms.

2. The grounds of the application as urged by Mr. Maingi learned counsel for the applicant are that:

- (i) *The applicant's rights to be released on reasonable bail or bond terms under Article 49 (h) of the Constitution are premised inter alia on his ability to afford the terms thereof.*
- (ii) *The terms so far given by the trial court are beyond his reach.*
- (iii) *The offences with which the Accused is charged are bailable under Article 49 of the Constitution and the Accused is willing to deposit any reasonable security or and as the court may deem fit.*
- (iv) *The applicant is suffering from diabetes and his condition worsens with each day spent on incarceration. Two medical reports from Nairobi Remand Prison Clinic are annexed.*
- (v) *The applicant is not a flight risk, since he has strong ties to the community and his physical place of abode is known.*
- (vi) *He also has business in Wote in Machakos.*
- (vii) *This honourable court has the power and discretion to vary the bail terms set by the trial court to secure justice.*

Learned counsel for the State, Miss Mwanza put things into perspective. She submitted that the applicant faces three counts of charges of robbery with violence contrary to **Section 296(2)** of the **Penal**

**Code.** That indeed the trial court granted bail terms of Kshs.1 million and upon the application of learned counsel for the applicant that the bail be reduced to Kshs.500,000 which the applicant could afford, the court indulged him and reduced the bail accordingly. In her view these bail terms are reasonable and should not be interfered with.

3. Article 49(1) (h) of the Constitution provides that 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.”***

The operative words are therefore “reasonable conditions” and “compelling reason not to be released.” The primary consideration in this application is whether the accused person shall attend court and be available for the trial. At this stage the applicant has the presumption of innocence on his side since he has not yet been tried and found guilty on any of the charges with which he is faced.

4. I have also considered his counsel’s submissions concerning his health and his willingness to comply with all conditions attendant to whatever terms the court will set along with the granting of the bail.

5. I am not persuaded that the bail terms set by the learned trial magistrate are punitive in any way in light of the seriousness of the charges with which the applicant is faced. The applicant is facing charges that carry with them the death penalty if convicted and it is important that the court strikes a balance between this reality and the presumption of innocence that operates in favour of the applicant at this juncture. In my view the learned trial magistrate’s terms are very reasonable in view of the fact that the applicant faces three charges under the death penalty. Kshs.500,000/= is not so high as to be prohibitive, while at the same time it is not so low as to enable the applicant to flee, leaving it behind without regret.

6. Our Penal institutions do have medical facilities and should be able to attend the applicant as and when he requires medical attention, including referring him to the National facility if need be.

7. I therefore decline to grant the application sought. The application is dismissed with costs.

**SIGNED DATED** and **DELIVERED** in open court this **19<sup>th</sup>** day of **January** 2012.

**L. A. ACHODE**

**JUDGE**