



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL MISC. APPLICATION NO. 42 OF 2020

JAMES WANJALA LUSAKA.....APPLICANT

VERSUS

PROSECUTION.....RESPONDENT

RULING

This is an application by the applicant James Wanjala Lusaka dated 19th October, 2020 seeking the following orders.

1. Spent

2. Spent

3. The orders of Webuye Principal 2020 of 5/10/2020 cancelling the applicant's bond set aside varied and or be discharged forthwith.

The grounds for the application are that there were no cogent and compelling reasons for the learned magistrate to cancel the appellants bond; that the trial court relied on hearsay, that the complainant had threatened to have the applicant's bond cancelled; that the content of the OB report NO. 34/30/9/2020 were not revealed in court, that the applicant is chronically ill and that the courts action was arbitrary and against the applicant's constitutional rights.

The application is supported by the affidavit of the Appellant sworn on 19th October 2020. He depones that on 5.3.2020 he was charged in Webuye Criminal case NO. 142 of 2020 with the offence or threatening to kill contrary to section 233 of the Penal code. The complainant in the case is the father of the appellant. He pleaded not guilty and was released on bond of Kshs 200,000 with a surety. He obtained a surety and was released. He attended the court on 13.6.2020 when the complainant testified. On 28.9.2020 he attended court when prosecution stated that he had threatened witnesses who had reported the same to police. Consequent upon the application the bond was cancelled.

Mr. Thuo for the state filed grounds of opposition stating that though applicant had been released on bond, he threatened witnesses under OB NO. 34/30/9/2020 and it was necessary to protect the witnesses. He therefore contends that the cancelation of bond was proper and the application be dismissed.

The trial magistrate upon hearing the application by the prosecution stated that the prosecution having tabled before this court an extract of the OB and the OB number being 34/30/2020, the court finds that the accused has threatened the witness. The accused bond is hereby cancelled. He will beheld in custody at Bungoma GK prison as the case pends.

It is common ground that the appellant was charged with an offence of threatening to kill contrary to section 233 of the Penal Code. It is also not in dispute that he secured a surety and was released on bond. This is the bond that was cancelled on 28.9.2020 for the reason that he had threatened witnesses in the case and mater reported to police vide OB No. 34/30/9/2020. The appellant in this application avers that the cancellation of the bond was arbitrary and unconstitutional.

The right of the accused to bond or bail pending the hearing of a criminal charge against him is provided for under Article 49(h) of the Constitution of Kenya. This right is premised on two key principles.

(a) The right of accused to be presumed innocent until proved guilty under Article 50(2) of the Constitution.

(b) The accused person right to liberty and pre-trial detention should be a measure of last resort, and any where there are compelling reasons.

An accused who has been released on bond does so, with conditions or obligations.

- 1. The accused obligation to attend court for trial as and when needed.**
- 2. Undertaking not to commit further offences while on bond.**
- 3. Undertaking not to interfere with the integrity of the criminal justice system**

This in view include.

- (a) Not interfering with or intimidating witnesses.**
- (b) Interfering with the evidence.**
- (c) Engaging in acts which endanger individuals of society in particular victims of his crime or the public at large.**

If he is in breach of these obligations, the interest of justice will demand that the accused bond may be canceled or denied to protect the criminal process from interference or hindrance by the accused person.

In this case the applicant was charged with offence of threatening to kill contrary to section 233 of the Penal Code. He was released on bond. The complainant in the case was the father of the accused. On being released, the appellant threatened a witness his step mother. The stepmother reported the same to police vide OB No. 34/20/9/2020. It is on this ground that this bond was cancelled.

Upon considering this application, it is in evident that applicant contravened one of the main condition attached to his release on bond that he will not interfere with witnesses. Interference with witnesses is a serious offence as it is not only exposes the witness to fear but also compromises the judicial process; and undermines the rule of law. This being a serious breach of the conditions for release of bond, the trial court was right in cancelling the applicants bond.

I therefore find no merit in this application which is hereby dismissed.

Dated and Delivered at Bungoma this 2nd day of March, 2021

S.N. RIECHI

JUDGE