



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO. 82 OF 2019**

**MOHAMED ADEL MBOYA.....ACCUSED**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS ...REPUBLIC**

**RULING**

This matter now comes up for the application of the applicant dated 16.7.2020. The same seeks that the applicant be released on bail pending the determination of his trial. The application is supported by the applicant's own affidavit detailing the fact of his place of abode in Nairobi, Kibera, Kianda and his ancestral home, as Kanjira West location, Kendu Bay, Homa Bay county. In the submissions before court, the applicant's counsel that bail is a constitutional right only to be denied upon proof of compelling reasons, and that there are no such compelling reasons herein.

While relying on the 2 cases of *Republic Versus Zachary Okoth Obado* and *Chris Philip Obure Versus Republic*, counsel submitted that the strength or otherwise of the prosecution's case alone cannot be a compelling reason, and that there must be proved that the applicant would interfere with witnesses.

The prosecution has opposed this application on the basis that at least 3 prosecution witnesses were workmates of the accused and that if released, he is likely to interfere with them. It was urged that the applicant be remanded till the evidence of the 3 witnesses are taken.

I have considered the submissions made by the parties regarding this application. Under Article 49(1)(h) of the constitution;

**“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.”**

As a general rule therefore bond or bail is a constitutional right of any accused person irrespective of the nature of the charges. However, the right is not an absolute right. Same may be denied where there exists compelling reasons. In simple terms, these are such reasons that are strong enough as to justify a denial of the right. It is the prosecution to show this proof.

The prosecution has opposed the grant of bail of to the accused herein, first on the ground that the accused is likely to interfere with the prosecution witnesses. That at least 3 of the witnesses were workmates of the prosecution. Where are likelihood of interference with prosecution witnesses could be a compelling reason, this court is of the view that for the same to stand, the prosecution must show the actual interference or an attempt to interfere with the said witnesses. Mere allegation as to the same cannot amount to a compelling reason as envisaged in the constitution. I dismiss this objection.

The 2<sup>nd</sup> ground of objection was that the prosecution has a strong case against the applicant which can be an incentive to the applicant to abscond if released on bail. This court notes that this matter is yet to be heard. The court cannot therefore gauge the strength or otherwise of the prosecution's case. In any case the accused, under Article 50(2)(a) has the right to be presumed innocent till the contrary is proved. This ground therefore, cannot on its own constitute a compelling reason.

In all, I am not convinced that the prosecution has proved the existence of any compelling reason that would justify a denial of the accused of the right to bail pending trial. I dismiss the prosecution objection and order that the accused may be released on bond on the following terms:-

1. A bond of Ksh.1 million with 1 surety of a similar amount, a different surety.

2. That the accused to specifically state his place of abode/physical address where he shall stay upon being released.

3. The accused to attend court at all times till his case is determined.

**D. O. OGEMBO**

**JUDGE**

**12.3.2021.**

Court:

Ruling read out in open court (online) in the presence of Mr. Maina for the state, Mr. Gichuki for the applicant and the applicant.

**D. O. OGEMBO**

**JUDGE**

**12.3.2021.**