



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**CRIMINAL REVISION CASE NO. 339 OF 2019**

**PATRICK MWENDWA WAIJWA.....REPUBLIC**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION ..... ACCUSED**

**RULING**

The applicant, **PATRICK MWENDWA WAIYWA** has filed a Notice of Motion application herein dated 2.12.2019. The same seeks that this court do review the terms of bond granted to him of Ksh.500,000 with 1 surety to one of Kshs.100,000 with 1 surety and an alternative of Ksh.20,000/= in cash bail. He noted that 2 witnesses have already testified in his case.

The prosecution has opposed this application on the grounds that the applicant is facing a serious charge of manslaughter which carries with a still sentence or which could go upto life imprisonment, and that the terms given by the court were reasonable and fair.

I have considered this application and the submissions made by both sides. The issue herein really is only whether the terms of bond granted by the trial court are reasonable. This is because the applicant was granted bond and his only plea is that the terms be reviewed because he is unable to meet the same.

The applicant, together with 2 others were charged with manslaughter on 8.10.2018. On entering pleas of not guilty, each were placed on a bond of Ksh.500,000 with 1 surety of a similar amount. And at least 2 witnesses have testified in the case as prosecution witness.

From the onset, it must be made clear that the issue of terms to be placed or grant of the right to bond or bail is a matter of discretion of the court. And the court is expected to exercise its discretion on the same Judiciously taking into account the individual circumstances of each case. The overriding principle being that the terms set must guarantee the accused's attendance in court for his trial. The Bail-Bond Policy Guidelines of paragraph 3.1(c) direct that the securities must aim at procuring the release of the accused together with sufficient undertaking that he will appear for trial.

Primarily the specific circumstances that trial court may consider regarding the terms of bond are as varied as it can be. At paragraph 4.9 of the Police Guidelines, some of these circumstances are listed as:-

- i. The nature of the charge**
- ii. The seriousness of the sentence incase of conviction.**
- iii. Strength of prosecution case.**
- iv. Character and antecedents of accused**
- v. Likelihood of interference with witnesses**
- vi. Need to protect the victims.**
- vii. Relationship between the accused and the witness.**
- viii. Whether accused is a flight risk**

**ix. Public order, peace and security.**

This list is in no way absolute. In granting bond on the terms it spelt out, this court is persuaded to believe that the trial court was well guided by the above principles and that it exercised its discretion accordingly.

This court is guided by the decision of the Court of Appeal, in the case of *Bernard Kimani Gacheru Versus Republic (2002)eKLR* on the issue of discretion of a lower court on a sentence (or order as in our case), that;

**“It is now settled law, following several authorities by this court and by the High Court, that sentence (read order) is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on facts of each case. On appeal, the appellant court will not easily interfere with sentence unless that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence, unless, any one of the matters stated above is shown to exist.”**

In our present case, it has not been shown to this court that the terms set by the trial court are excessive or unreasonable in the circumstances. It has also not been shown that the trial court overlooked any material factor, took into account a wrong factor, or acted on any wrong principle. It does not suffice on the part of the applicant to simply say that he is unable to meet the terms.

In view of the above observations, this court is not convinced that the applicant has shown any ground or cause good enough as to make this court review the discretionary orders of the trial court on the issue of bond. I accordingly find no merit in this application dated 2.12.2019. The same is dismissed wholly.

The Deputy Registrar of this Court is accordingly directed to forward back the original court file No. Criminal 2473/2018 (Trial file) immediately to the Chief Magistrate, Makadara Law Courts, so that this case may proceed to its logical conclusion. Orders accordingly.

**D. O. OGEMBO**

**JUDGE**

**16.3.2021**

**Court:**

Ruling read out in open court (on-line) in the presence of Ms. Kulogoma for the applicant, the applicant and Ms. Chege for the state.

**D. O. OGEMBO**

**JUDGE**

**16.3.2021**