



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

MISC. CRIMINAL APPLICATION NO. 52 OF 2020

CALEB WAFULA ODINGA....APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR

(Being a revision application of the order of 10th September, 2020 at Limuru Chief Magistrate's Court, Criminal Case No. 40 of 2020)

RULING ON REVIEW

1. **CALEB WAFULA ODINGA (Wafula)** was charged with one count before the Limuru Chief Magistrate's court, on 20th July, 2020, that is the offence of stealing contrary to Section 268(1) as read with Section 275 of the Penal Code. Wafula pleaded not guilty. The trial court on 23rd July, 2020 admitted him to cash bail of Kshs.200,000/= . On 6th August, 2020 Wafula prayed for the trial court to reduce his bail terms. The trial court ordered the probation officer to prepare a report on that application. When that report was availed, the trial court ordered Wafula to provide bond of Kshs.200,000/= with a surety of similar amount. Wafula's application before this Court dated 21st September, 2020 is for prayer that this Court do review the trial court's bail terms and pending determination of that prayer that the proceedings before the trial court be stayed.
2. In his affidavit dated 21st September, 2020, in support of the application for review, Wafula stated that he is a man of humble means and similarly that his family has no means to meet the terms of his release on bail. That his family can only afford to provide Kshs.50,000/= for his release on bail.
3. The application is opposed by the Director of Public Prosecutions (DPP). DPP, by the grounds of opposition filed on 12th April, 2021 stated that the bail terms of the trial court were reasonable, that the prayer for stay of the criminal proceedings would negatively impact Wafula, since he was in custody, and that DPP would suffer prejudice if the orders sought by Wafula were granted.
4. Wafula correctly cited **Article 50(2)(a)** of the Constitution to aid his application. That Article provides that every accused person has a right to fair hearing which includes a right to be presumed innocent until contrary is proved.
5. The trial court in exercise of its discretion, with the information it had, first admitted Wafula to cash bail of Kshs.200,000/= and later to a bond of Kshs.200,000 with surety of similar amount. Can this Court interfere with the trial court's exercise of its discretion?
6. Whereas the **Bail and bond Policy Guidelines** provides that bail or bond terms should be reasonable it however provides that it should not be so low that an accused would be willing to forfeit it and abscond. An accused person is released on bail or bond on terms that would, in all circumstances, ensure he would attend his trial. Plainly the High Court can, as provided under **Section 123(3)** of the Criminal Procedure, reduced the terms of bail or bond of the subordinate court.
7. The probation report availed to the trial court when it admitted Wafula to bail is before me. That report raised certain issues that required clarity or rebuttal from Wafula.
8. One issue was whether or not Wafula was married with one child as he informed the probation officer. When Wafula's siblings were asked by the probation officer they denied that Wafula had a wife.
9. The second issue is, even though Wafula's family stated they were of humble background they however declined to support his release on bond.
10. The third issue was raised by the Investigating Officer who stated that Wafula ran away after the offence was committed, and was

arrested in Eastleigh area when he was presented before the trial court.

11. None of the above issues received a rebuttal from Wafula. It was not enough for Wafula to allege that his siblings said he had no wife and child because of family wrangles. Wafula did not present a national identification card for his alleged wife or birth certificate of his child to prove his truthfulness. This Court is therefore inclined on a balance of probability to find that Wafula was not candid in saying he needed to be released on lower terms because he needed to provide for the family. I do not therefore find that the trial court misdirected itself in the matter of application to reduce terms of bail and I do not find that it reached a wrong decision in the order it made.

12. In view of the above finding, the application dated 21st September, 2020 is dismissed

RULING DATED, SIGNED AND DELIVERED AT KIAMBU THIS 6TH DAY OF MAY, 2021

MARY KASANGO

JUDGE

Coram:

Court Assistant.....Ndege

Applicant:Ms. Otieno

Respondent: Mr. Kasyoka

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE