



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 11 OF 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

1. PETER IRUNGU MAINA

2. ERUSTUS MAINA KIBUI

3. ISAIAH MEREU KAIYOK

4. JOSEPH MOTOMPA

5. DANIEL PARKIRE.....RESPONDENTS

RULING

1. This Ruling is directed at the application dated 27th April, 2021 filed by **JOSEPH MOTOMPA** (Joseph), the 4th accused in this matter.
2. Joseph and his co-accused, who are in total five, are charged with the offence of murder. They all pleaded not guilty. Their trial is yet to be concluded. On 14th April, 2020 the court ordered the 2nd, 3rd, 4th and 5th accused to be released on bond, pending trial, of Kshs.500,000/= and two sureties of similar amount. Subsequently, the 1st accused was also given similar bond terms.
3. The application dated 27th April, 2021 seeks review by this Court, of the bond terms granted to Joseph. In support of that application is the affidavit of **SAMUEL KIPAS MOTOMPA** who is Joseph's paternal uncle. He deponed that Joseph has been unable to get two sureties. He further deponed that Joseph prior to his arrest for the offence of this matter, was working at a car wash in Suswa town in Narok County. further that the earnings from that employment cannot now assist him in raising the bond required.
4. The paternal uncle further stated that Joseph has an elderly sickly mother and an alcoholic father.
5. *Mr. Karanja* the learned counsel for Joseph submitted that the greatest impediment to Joseph meeting the bond terms was the requirement of two sureties of Kshs.500,000/=.
6. **Article 49(1)(h)** of the Constitution provides that:-

“49(1) An arrested person has the right-

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

7. Before trial, if there is no just cause or compelling reason to deny one bail/bond, an accused person is entitled to bail. Integral to that Constitutional provision is that an arrested person is entitled to be released on bail/bond on reasonable terms. The presumption of innocence is the golden thread woven in the Constitutional provision under **Article 50(2)(a)**. The Constitutional provision on right to bail has two distinct elements, right to reasonable bond/bail and right not to be denied bail/bond unless there are compelling reasons.

8. In this case, Joseph was granted bond but since April, 2020 he has been unable to meet the terms of that bond because he comes from a humble background. Since his right to be presumed innocent is protected under the Constitution, and because there is no compelling reason to deny him his prayer and also because his prayer was not opposed by the prosecution, I find it would be unjust to deny him liberty just because he comes from a humble background. I will therefore accede to his prayer.

DISPOSITION

9. I grant the following orders:-

10. **JOSEPH MOTOMPA**'s bond terms issued on 14th April, 2020 are hereby reviewed and **JOSEPH MOTOMPA** is hereby released on his own bond of Kshs.300,000/- with one surety of similar amount.

11. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 17TH DAY OF MAY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant..... Kevin

4th Accused: Present

For 4th Accused: N/A

For DPP: Ms. Kathambi

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE