



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**(Coram: Odunga, J)**

**CRIMINAL MISC. APPLICATION NUMBER E027 OF 2021**

**JMM.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant herein was charged with the offence of attempted incest contrary to section 20(2) of the *Sexual Offences Act*, No. 3 of 2006 before the Machakos Chief Magistrate Court SO Case No. E011 of 2020.

2. When he was arraigned before **Hon. B. J Bartoo**, SRM on 23<sup>rd</sup> September, 2020, he pleaded not guilty and applied to be released on bond. That application was however opposed by the prosecution on the ground that since the victim was a grandchild of the accused, there was likelihood of interference. The Court then set the ruling on 29<sup>th</sup> September, 2020 and in the meantime directed that a probation officer's report be availed.

3. On 29<sup>th</sup> September, 2020, the matter was placed before **Hon. Analo**, RM and on that day the Applicant was absent. It was then stood over to 6<sup>th</sup> October, 2020 with the court issuing a production order. Thereafter several mentions took place before different magistrates. It would seem that the issue of the delivery of the ruling got lost somewhere in the labyrinth of the mentions.

4. Before me is a Chamber Summons filed on 10<sup>th</sup> March, 2021 seeking that the applicant herein be admitted to reasonable bond terms pending the hearing and the determination of the said case.

5. The application was opposed by the Respondent vide grounds of opposition.

**Determination**

6. I have considered the material before me.

7. Article 49(1)(h) of the Constitution provides that:-

***An accused person has the right ...***

***(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.***

8. It is clear that once an accused is arraigned before the trial court, whether or not an application for release on bail is made, it is the duty of the trial court to deal with the issue. It is for the prosecution to present before the court the existence of compelling reasons and in the absence of so doing the accused person is entitled to be released on bail. However, where compelling reasons are given nothing bars the court from denying the release of the accused on bail for a definite period. In other words, the trial court may find from the material placed before it that at that stage it would not be just to release the accused on bail and that the application may be renewed at a later stage when the circumstances have changed, for example where vulnerable witnesses have testified. Either way, the court is obliged to make a ruling on the application. In other words, the Court ought to make a specific finding as to whether or not it is satisfied that compelling reasons exist that militate against the admission of the accused to bail at any particular stage of the proceedings.

9. In this case, it is clear that no ruling has been made in the application for bail despite a date for its delivery having been given. The date for the said delivery passed without the same being made.

10. Since the trial court has not made a ruling on the application, the order which commends itself to me and which I hereby make is that **Machakos Sexual Offence Case No. E011 of 2020** be mentioned before the trial court (**Hon. Bartoo, SRM**) on 27<sup>th</sup> July, 2021 with a view to making a determination on whether or not to admit the applicant to bail pending trial. It is so ordered.

**Read, signed and delivered in open Court at Machakos this 22<sup>nd</sup> July, 2021.**

**G.V. ODUNGA**

**JUDGE**

**Delivered in the presence of:**

**The Applicant online**

**Mr Ngetich for the Respondent**

**CA Simon**