



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO. 89 OF 2019**

**REPUBLIC.....DPP**

**VERSUS**

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

**RULING**

The applicant **MOHAMED ADEL MBOYA**, has now filed an application herein dated 13.4.2021. The same seeks that this court do review the terms of bond as set in the orders of this court on 12.3.2021. The application is grounded and supported by the affidavit of the applicant attached to the application. The applicant has deponed therein that he has been unable to meet the terms of bail set. That he has been dependent on his sister in law whose business has dwindled during this period of the Covid-19 pandemic.

The prosecution has opposed this application on the basis that the applicant has not shown any sufficient ground as to justify any revision of the terms set of bail.

I have considered the submissions of both the applicant and defence sides. This court already determined the applicant's application for bail. In the said ruling, the court dismissed the objections of the prosecution and granted the applicant bail on terms. He was to be released upon posting a bond of Kshs.1 million with 1 surety of a similar amount. The main ground raised in this revision application is that the applicant has been unable to meet the terms as set.

Article 49(1)(h) of the constitution guarantees an accused person the right to be released on bail on reasonable terms. In my view, what would constitute reasonable terms would depend on the circumstances of each case. What would readily come to mind could include the nature of the charge, the age of the accused, severity of possible punishment, accused's own past records of either jumping bail or whether he has any past criminal records. This is only to mention but a few.

There is no doubt that the applicant faces a serious charge which attracts a severe sentence. In the earlier ruling, the court considered all these circumstances before setting the terms of bail. The applicant has not shown any change of circumstances in his case.

The only new consideration that this court can consider is the ravaging Covid-19 pandemic which has brought up the need to decongest the prisons and remand homes to minimize chances of infection and spread of the virus in the institutions. It is on this basis that I allow the applicant's application for review.

I accordingly order now that the applicant may be released on a (revised) bond of Kshs.500,000/= with 1 surety of a similar amount. He may in the alternative be released on a deposit of cash bail of Kshs.200,000/=. The other terms of bond as ordered on 12.3.2021 would remain the same. Orders accordingly.

**D. O. OGEMBO**

**JUDGE**

**13.7.2021.**

Court:

Ruling read out in open court (on line) in the presence of Mr. Naulikha for the state and Mr. Gichuki for the accused, and the applicant (Nairobi Remand).

**D. O. OGEMBO**

**JUDGE**

**13.7.2021.**

Court:

A hearing date to be fixed. Hearing 28.9.2021.

**D. O. OGEMBO**

**JUDGE**

**13.7.2021.**