



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 4 OF 2017

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

1. EVANS OCHIENG OYOMBE

2. BENSON MUHINID MATSANZA

3. JACKSON WAINAINA KAMAU..... ACCUSED

RULING

1. The 1st accused, **EVANS OCHIENG OYOMBE**, has moved this Court seeking re-instatement of his bail by his application dated 26th February, 2020.

2. On 6th February, 2017 all accused pleaded not guilty to the offence of murder on 3rd July, 2019, 1st accused failed to attend court for his trial. The information relayed to the court on that day was that the 1st accused was absent because he was undergoing surgery for arthritis. On 4th July, 2019, a letter of Texas Maximum care (medical and maternity) was presented to court by 2nd accused on behalf of the 1st accused. That letter indicated that the 1st accused had under gone minor surgical procedure at that facility and due to that surgery he was given two weeks off duty.

3. *Justice Meoli* requested the origin of that letter be confirmed and as a result of investigation, that letter was confirmed as a forgery. The learned Judge, *C. Meoli* in her Ruling dated 31st July, 2019, in part, had this to say of the forged documents:-

“7. It seems clear to me from their conduct that neither the 1st accused nor his surety have taken seriously the conditions of bail in this matter, nor court proceedings. Secondly, the 1st accused appears to have determined, perhaps with the intention of scuttling the trial, to skip the hearing scheduled on 3rd and 4th July, 2019. That on two separate occasions, he had no qualms about presenting the court what are obviously fake documents speaks volumes. In my own view, the 1st accused has demonstrated that he does not respect his bail terms. The surety is not better. He too has been exposed as unfit for purpose.

8. In the circumstances, I will cancel the bail in respect of the 1st accused. I will further direct that the surety Jacob Otieno Owuor is not suitable as a surety ...”

4. It is that cancelled bail that the 1st accused seeks by his present Notice of Motion application to have re-instated. In his affidavit in support of the application, 1st accused deponed that he has been in remand since 17th July, 2019; that in that time, he has learnt the importance of attending court when required; that “human is to error” (sic); and that he is remorseful and is willing to comply with all the conditions of release.

ANALYSIS

5. The prosecution has so far in this case called 4 witnesses. Prosecution is yet to close its case. **Article 49(1)(h)** of the Constitution provides that an arrested person is entitled to be released on bail/bond on reasonable terms unless there are compelling reasons. **Section 123A** of the Criminal Procedure Code (CPC) provides guideline for the consideration by the court when determining bail application.

Section 123A CPC provides:-

“(1) Subject to Article 49(1) (h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular-

(a) the nature or seriousness of the offence;

(b) the character, antecedents, associations and community ties of the accused person;

(c) the defendant’s record in respect of the fulfillment of obligations under previous grants of bail; and

(d) the strength of the evidence of his having committed the offence.

2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—

(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;

(b) should be kept in custody for his own protection.”

6. 1st accused was originally granted bail but due to his failure to attend court on two separate days and because of presenting forged medical documents, his bail was cancelled.

7. The purpose of granting bail/bond, amongst others, is to ensure an accused does attend court when required to do so. The absence of the 1st accused on 3rd and 4th July, 2019 prevented the progress of the prosecution’s case.

8. The holding in the case SAMUEL MUTHAURA VS. REPUBLIC (2020) eKLR is very apt to the facts of this case. It was held:-

“21. At this point, needless to state that the purpose of bail or bond is to protect the rights and freedom of the accused while at the same time ensure the attendance of the accused at his trial. This preserves the integrity of trial and judicial system as the constitutionally-mandated method of administration of criminal justice. The applicant absconded and it took two months to arrest him. Absconding is surely a compelling reason not to release the accused on bail or bond. Accordingly, given the circumstances of this case, the trial magistrate was right in rejecting review of his orders to cancel the bond and other attendant orders thereto. This court also finds that the accused absconded and his attendance in court may not be guaranteed. For that reason, I reject his plea for bail and or bond on fresh terms.”

9. In my view, there is no sufficient reason presented by 1st accused to justify re-instatement of his bail. The application dated 26th February, 2020 is dismissed.

RULING DATED and DELIVERED at KIAMBU this 18th day of NOVEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Maurice

For DPP :- Mr. Kasyoka

For 1st Accused :- Mr. Farah holding brief for Juma

For 2nd Accused:- Mr. Farah holding brief for Juma

For 3rd Accused:- Mr. Farah

1st Accused : **EVANS OCHIENG OYOMBE:- Present**

2nd Accused : **BENSON MUHINID MATSANZA:- Present**

3rd Accused : **JACKSON WAINAINA KAMAU:- Present**

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE