



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL REVISION NO. 34 OF 2020**

**JOSHUA KILERU MUNJURE..... APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING**

1. On 3/12/2019, **Joshua Kileru Munjure (“the applicant”)** was arraigned before the Principal Magistrate’s Court at Tigania and charged with the offence of grievous harm contrary to **section 234 of the Penal Code**.
2. It was alleged that on 30/9/2019 at Muriri market at Muthara Location, in Tigania East sub-county within Meru County, the applicant unlawfully did grievous harm to **Sabera Kabiria**. He faced a second charge of assaulting **Godfrey Mwiti** on the same day, time and place.
3. The applicant denied the charges and applied for bond. The trial Court ordered for a pre-bail report which was duly filed. By a ruling delivered on 6/4/2020, the trial Court declined to grant the bond notwithstanding that the pre-bail report was positive.
4. Aggrieved by that decision, the applicant has, vide his Motion on Notice dated 22/4/2020, applied for the review of the said decision. The grounds thereof are that; the applicant had been in custody since October, 2019, that the pre-bail report dated 8/1/2020 was positive and that the prevailing conditions of covid-19 warrant the grant of bond.
5. The jurisdiction of this Court on revision under **sections 362 and 364 of the Criminal Procedure Code** is clear. It is limited to this calling up for the record of the lower court with a view to satisfying itself as to the correctness of any of the proceedings undertaken and or order made therein.
6. I have called for and considered the record of the trial Court. The record shows that at the time of pleading to the charges on 5/12/2019, the prosecution opposed the application for bail for the reason that the applicant was facing other cases before both the High Court and the subordinate Court. It is then that the trial Court ordered for a pre-bail report that returned a positive report on the applicant.
7. In declining bond, the trial Court found that the applicant had another case before Court 2 in Tigania viz **Cr. Case No 1098 of 2019**. Further, the Court found that after the incidents giving rise to the charges facing the applicant, he had disappeared for two months leading to his absconding in the aforesaid **Tigania Cr. Case No 1098 of 2019**.
8. Bond or bail is a constitutional right which an accused is entitled to unless there are compelling reasons under **Article 49(1)(h) of the Constitution**. Compelling reasons may include but not limited to; the likelihood of an accused repeating the offence or committing other offences, the accused being a flight risk, the personal security of the accused or generally public interest.
9. In the present case, the trial Court seems to have considered the personal circumstances of the applicant, his community, his conduct after the incident and in the pending case before that Court. It arrived at the conclusion that it was unsafe to release the applicant to the community but reserved his right to make a similar application at a later stage after the complainants have testified.
10. The trial Court further considered the provisions of the law governing grant of bail. It cited and considered **section 123 of the Criminal Procedure Code** as well as **Article 49(1)(h) of the Constitution**. It also addressed itself to case law on the issue of bail. Can the trial Court then be faulted for the decision it made.
11. I do not think so. The applicant has not denied that he faces another case before the same court. That he disappeared after the incidents the subject of the charges and thereby absconded in respect of **Tigania Cr. Case No 1098 of 2019**. Those to my mind were compelling reasons for the trial Court not to have granted him the bond sought.

12. In the circumstances, I find that the trial Court exercised its discretion properly in making the impugned orders. Accordingly, I decline to review the decision of the trial Court made on 9/4/2020 and dismiss the Motion dated 22/4/2020.

It is so ordered.

**DATED and DELIVERED electronically at Meru this 5<sup>th</sup> day of May, 2020.**

**A. MABEYA**

**JUDGE**