



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 4 OF 2019

JAMES MBOGI WANJIKU.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

This matter now comes up for the application of the accused dated 11.3.2020. The same brought generally under the Criminal Procedure Code, seeks that the accused be released on bail pending trial. It is supported by the affidavit of Seth M. Kamanza, advocate. The application has been opposed by the state.

When the same came up for hearing on 22.9.2020, counsel for the accused applicant made only short submissions that the accused has a constitutional right to bail and that he is willing to abide by any conditions that the court may impose on the grant of bail.

The state has opposed this application. First, on the ground that the accused is likely to interfere with the witnesses since he knows the witnesses well including where they stay. And that one of the witnesses is a minor who is vulnerable. And lastly, that accused is likely to abscond if released on bond, now that he knows the strong case of the prosecution. That, this is an incentive for him to abscond. Counsel pleaded that the accused be remanded in custody till the case is determined.

I have considered the submissions of both sides of this application. Article 49(1)(h) of the constitution of Kenya, declares that all accused persons have a right to bail pending trial, except where it is proved the existence of compelling reasons that would justify the denial of the right.

It is therefore a general requirement that all accused's irrespective of the charges they are facing are entitled to bail. This right is however, not absolute. It may be denied should the prosecution prove the existence of any compelling reasons. As to what would constitute compelling reasons, I am guided by the judiciary bail and bond policy guidelines which at paragraph 4.9, lists some of the factors that would constitute compelling reasons. Amongst these are:

- **The nature of the charge, seriousness of the charge and the likely sentence in case of the conviction.**
- **The strength of the prosecution's case.**
- **The character and antecedents of the accused**
- **Likelihood of interference with witnesses.**
- **Relationship between the accused and the potential witnesses.**
- **Whether the accused is a flight risk.**
- **Public order peace and security.**

The above list is by no means exhaustive. From the onset, it must be stated that the main objective of bail or bond is to enable the accused attend to his case or trial while out of custody. It is not a licence for the accused to run away never to face his accusers in court. Neither is it an opportunity for the accused to interfere with the case or with the witnesses. Tis is the decision in the celebrated case of Republic Versus Godfrey Madegwa & 6 others (2016)eKLR. I am duly guided by this decision.

In this case, it has been submitted that the accused is likely to interfere with witnesses if released on bail. That he knows the witnesses well including where they stay. And further, that at least one of the witnesses is a minor and so a vulnerable witnesses. Whereas the prosecution has not shown any actual threat or attempt to interfere with the said witnesses, the impression that this court gets is one where the parties known each other and even stay in the same neighbourhood. At least one of the witnesses is a minor, an obviously vulnerable witness. This court is convinced that these factors put together prove a real danger of interference with the witnesses should the accused be released on bond.

The other ground raised by the prosecution in opposing this application is that the accused is likely to abscond now that he knows the strength of the prosecution's case against him. With respect, I do not find this persuasive since this case is still fresh and no witnesses has given evidence. Suggesting that the prosecution's case is strong is therefore speculative and premature in the circumstances.

In all, I am convinced that the prosecution has managed to prove at least 1 (one) compelling reason that would warrant a denial of bail to the accused. I accordingly therefore order that the accused be remanded in custody till the time when the evidence of the minor, a vulnerable witness, shall have been taken. He will then be at liberty to apply a fresh. Orders accordingly.

HON. JUSTICE D. OGEMBO OGOLA

2ND OCTOBER 2020

Court:

Ruling read out in court in presence of the applicant, Mr. Kimanza and Mr. Mutuma for the DPP.

HON. JUSTICE D. OGEMBO OGOLA

2ND OCTOBER 2020