



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

MISC CRIMINAL APPLICATION CASE NO 55 OF 2020

ETHAN KAMAU NJAGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. **Ethan Kamau Njagi** has approached this court with an application by way of Notice of Motion dated 2nd October 2020. The Applicant seeks revision of the orders of the trial court, the Kiambu Chief Magistrate's Court. In that case the application is charged with eleven counts. Those counts relate to the offences of personation contrary to section 382 as read with Section 36 of the Penal Code, the Offences of Obtaining money by false pretenses contrary to Section 313 of the Penal Code, the offences of making a document without authority contrary to Section 357(a) of the Penal Code and offences of uttering false documents contrary to Section 353 of the penal Code. The Applicant pleaded not guilty to those charges.

2. The Applicant applied to be released on bail pending trial. The trial court by its Ruling dated 25th September 2020 denied the Applicant bail. The present application seeks review of the trial court's order declining to release the Applicant on bail.

3. The Applicant has based this application on the grounds that he was arrested on 15th September 2020 and detained at the police station for ten days; on the ground that he has a pre-existing medical condition which requires constant attention; that the offences he is charged with are minor, that there is no probability nor incentive therefore of absconding; and that the Applicant's place of abode is well known and there is therefore no risk of his flight.

4. The application is opposed by the state on the grounds that it is frivolous, vexatious and misconceived. Further that the Applicant failed to demonstrate that the trial court's denial of bail was incorrect or illegal.

Analysis and Determination

5. The Learned trial Magistrate by her considered Ruling on the bail application stated that she considered the Objections raised by the state. The Learned Magistrate considered what the state submitted that the Applicant escaped citizen's arrest by the Complainants in the case and that it was the subsequent arrest that brought him before the trial court. The trial Magistrate also considered the nature of the charge the Applicant faces and concluded that the state had advanced compelling reason to deny the Applicant bail.

6. I have considered the application for review. The Applicant, while he awaits his trial, is presumed innocent: See Article 50(2) of the Constitution. It is pertinent to consider what was stated in the case **Republic -v- Danfornd Kabage Mwangi (2016) eKLR** as follows:

"There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the constitution and courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned. Supreme Court of India in Masroor v. State of Uttah Pradesh and Anor (2009) (14) SCC 286"

7. Indeed, Article 49(1)(h) of the Constitution provides that an arrested person has a right to be released on bail unless there are compelling reasons. In the case **Hassan Mahat Omar and Another -v- Republic HC Criminal Revision No 31 of 2013** it was stated.

"What amounts to compelling reasons as envisaged in Article 49(1) (h) of the Constitution is a matter of judicial discretion. Kenya does not have statutory guidelines to govern the granting of bail.

However, a glimpse at pertinent laws of other common law countries such as the Bail of England and Section 60(4) of the Criminal procedure Code of South Africa, gives us examples of issues to consider in determining whether or not compelling reasons exist in a given case.”

8. I have considered the trial court’s Ruling. In considering an application such as the one before me I will be guided by the Law having considered the relevant information placed before me. Each case depends on its own circumstances. I am inclined to concur with the submissions of the state that the decision was not illegal or incorrect. The Applicant has similar charges, that he faces, before the Magistrate’s court Kangema. He is facing before the trial court a total of eleven counts. Therein lies the very possibility of the Applicant taking flight to avoid his trial. He did after all escape when he was apprehended by the complaints. The fact the Applicant is unwell is not sufficient reason to review the trial court’s Ruling. The trial court was very aware of the Applicants statement that he was unwell and did therefore make an order for the Applicant to be taken for treatment whilst in remand. On the whole there is no merit in the application.

9. Accordingly, the Notice of Motion dated 2nd October 2020 is dismissed.

SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF DECEMBER 2020.

MARY KASANGO

JUDGE

10th December 2020

Before Justice Mary Kasango

C/A: - Kevin

Accused: - No Appearance

For the Applicant: Ms. Gachomo

For the Respondent: - Mr. Kasyoka

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE