



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**MISC. CRIMINAL APPLICATION NO. 22 OF 2018**

**MAURICE AMUGUMBI JUMBA.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

1. Before me is a Notice of Motion filed on 7<sup>th</sup> March, 2018 brought under Article 50(2) of the Constitution and Section 362 and 364 of the Criminal Procedure Code. The Applicant sought an order to consolidate the bond terms in criminal case No. 792/17 and 768/17 (Limuru SPM’s Court) at Kshs. 500,000/= and in the alternative to grant cash bail of Kshs. 100,000/= .

2. The Application is premised on the ground that the Applicant is unable to comply with the said bond terms. In his supporting affidavit filed on 7<sup>th</sup> March, 2018. The Applicant deponed that he was granted bond of Kshs. 700,000/= and Kshs. 500,000/= in criminal cases No.792/17 and No.768/17 respectively, that subsequently, bond in criminal case number 792/17 was reduced to Kshs. 500,000/=. His prayer was that this Court consolidates the bond terms in both cases to Kshs. 500,000/= and in the alternative to grant him cash bail of Kshs. 100,000/= so as to secure his freedom and to also enable him to adequately prepare for his defence. He swore that some vital documents cannot be accessed while he is in custody. He deponed that he will undertake to attend all the hearings until the case is heard and determined. The record does not contain any grounds in opposition or replying affidavit by the Respondent.

3. The application was canvassed by way of written submissions. The Applicant submitted that he is unable to raise his current bond terms as he comes from a humble background. He submitted that the main purpose of granting bond is to ensure that the accused person shows up for trial and as such, bail terms in separate trials may be consolidated. He placed reliance on the case of *Martin Murathi Muriria vs. R (2016) eKLR* where it was held that bail should never be punitive. The Applicant also relied on the case of *Stephen Gitau Karanja vs R (2018) eKLR* where it was held that **even where the Applicant faces serious charges, however, he is presumed innocent until proven guilty.**

4. The Respondent filed their written submissions on 3<sup>rd</sup> December, 2018. It was submitted that the trial court’s bond terms of Kshs. 700,000/= and 500,000/= are reasonable as the accused person is facing serious charges and consolidation of both bond terms may not be practicable as the offences were committed on different occasions and locations. The Respondents relied on the decision of the High Court in *George Kamau Ndungu and 3 Others v R [2013] e KLR* –

5. The court has considered all the material canvassed in respect of the application. There is no gain-saying the fact that the Applicant herein is entitled to be released on bond or bail, on reasonable conditions in the pendency of the trials. He is also entitled to the presumption of innocence throughout the trial (**Articles 49 and 50** of the Constitution). Whereas the trial court must consider the nature of the charges and other relevant matters in deciding whether to grant bail and what conditions to impose, it must also bear in mind that the accused person is presumed innocent until proven otherwise.

??6. Hence the caution in *Watoro v Republic (1991)KLR 220* as cited by *Achode J* in *George Kamau’s* case:-

**?“ The seriousness of the of fence in terms of the sentence likely to follow a conviction has been held repeatedly to be a consideration in exercising discretion....What I think is important for the court to bear in mind, ?and reason for the caution to remember the ?presumption of innocence, is that, it would be ?wrong to leap to the conclusion that the accused was ?guilty because has been charged and decide the bail ?application on that basis.”**

??7. The ultimate purpose of bail is to ensure that the accused person will attend trial. Obviously, the more severe the likely punishment for the offence charged, the more likely that an accused person may be tempted to abscond to avoid the eventuality of punishment. Therefore, in as much as the court must pay attention to the charges facing an accused person, it must be careful to give effect to the right to bail while determining what conditions to impose. If that does not happen, the terms imposed may well turn out to be effectively a denial of the right to bail.

8. There must be a balance between the presumption of innocence and the nature of the offence, as observed by **Ibrahim J** (as he then was) in **Philip Anyanya v R (2010) eKLR**

**“Whatever the court will decide, the fear and anxiety exerting on an accused’s mind during the trial in a murder case cannot be ignored. The possibility of thinking of flight by an accused person facing a capital offence is real and cannot be wished away. It is therefore true that the seriousness of an offence and the sentence for which is possible upon conviction is a matter which can bear on the accused and can affect his decision to attend trial or not.”**

9. The balance between the presumption of innocence and the seriousness of the offence can only be struck through consideration of the peculiar facts of the case at hand. The Applicant herein is charged jointly with two other accused persons on separate charges of attempted robbery with violence contrary to section 297(2) of the Penal code, in Criminal Case No. 768/17, and robbery with violence contrary to Section 296(2) of the Penal code in Criminal Case No.792 of 2017. The charge particulars in each case are different with different complainants and dates of offence. Both offences attract a maximum death penalty.

10. The trial court granted bail on terms that the Accused person be released on a bond of KShs.500,000/= and KShs.700,000/= respectively, with like surety in each case. In light of the offences the terms are reasonable, as evidenced by the fact that the Applicant’s co-accused have already been released on bond. I notice from the proceedings of the lower court that there has been erratic attendance of court proceedings by the Accused persons, resulting in the fact that none of the cases had proceeded to hearing as at October 2018. Besides, it seems that the Accused persons in the two matters have other ongoing cases in different courts. In particular it appears from the court record that the present Applicant has a pending case before the Kitui subordinate court. Since June 2018 he has not attended proceedings in Criminal Case No. 768/17 while inexplicably attending Cr. Case 792/17 intermittently until August 2018 after which date he and his co-accused have been absent.

11. The consolidation of bail terms therefore in the two matters can only further complicate matters so far as the administration of bail is concerned. The court is not satisfied that the application in this circumstances is deserved. Indeed, it seems to me that there is need for the trial court to insist on two separate sureties in the cases so that the attendance of the accused persons can be assured. This court declines, at this stage to allow consolidation of bail. The application is dismissed.

**DELIVERED AND SIGNED AT KIAMBU THIS 7<sup>TH</sup> DAY OF MARCH 2019.**

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**C. MEOLI**

**JUDGE**

**In the Presence of:-**

**Miss Ndombi for DPP**

**Applicant – Present**

**Court Clerk – Kevin/Nancy**