

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 443 OF 2018

EMMANUEL OJUKI OTIENO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant in this case prays for consolidation of his bail terms. He submitted his father who is since deceased had stood surety for him. He currently takes care of his ailing mother who developed blood pressure after the death of her husband. He argued that he has been in remand for one year and six months yet the cases were not proceeding.

2. Mr. Momanyi for the Respondent did not oppose the application upon submitting that all the cases were at Milimani Law Courts.

3. Before me are original record of five criminal cases in which the Applicant is charged (in some jointly with others) with various offences which are related. In Criminal Case No. 146/2018, bail terms were suspended because he had other criminal cases. It was argued by the prosecution that he had absconded but he advanced a defence that his father had died. He faces two counts of making a document without authority, two counts of uttering a false document and one count of attempt to obtain by false pretences. The proceedings do not show that any bail/bond was granted.

4. In Criminal Case No. 1969 of 2015, he faces twelve counts variously of conspiracy to defraud, making documents without authority, uttering false documents, procuring execution of a document by false pretence and personation. His father was a surety but passed on before the trial was concluded.

5. In Criminal Case No. 781 of 2016, he faces three counts of making a document without authority, three counts of uttering a false document, one count of personation and one count of attempt to obtain by false pretence. He was granted a bond of Kshs. 300,000/= or cash bail of Kshs. 100,000/=. He procured his release through deposit of a security. He was later arrested and charged in Criminal Case No. 118/2017 in which he was granted a cash bail of Kshs. 20,000/-. In case No. 781/2016, several warrants of arrest were issued after he absconded.

6. In Criminal Case No. 1449 of 2016 the Applicant faces one count of conspiracy to defraud, three counts of making a document without authority, three counts of uttering a false document, one count of personation and one count of attempt to obtain goods by false pretence. He was released on a bond of Kshs. 300,000/= or cash bail of Kshs.100,000/=.

7. I have considered the Applicant's plea. Whereas an accused is presumed innocent until proven guilty, the Applicant's case represents a person whose antecedents are of a likely offender. He did not learn from mistakes in the first case culminating into four files being opened against him. Most unfortunate is that all the charges are similar in all the files which raises an eye brow that the Applicant is not about to stop being a re-offender. It is for this reason I find it not prudent to consolidate the bond terms.

8. I have regard to the fact that the bond terms granted are very reasonable. I shall not vary them save in Criminal Case No. 1969 of 2015 where I order his release on a bond of Kshs. 300,000/= or a cash bail of Kshs. 100,000/=.

9. In sum, the application is dismissed with a variation of the bond terms in Criminal case No. 1969 of 2015. Once he is able to meet the various bond terms, the cases should be mentioned before the Chief Magistrate or any other magistrate he may allocate for confirmation of payment of the bonds/bails and order for his release.

Dated and delivered at Nairobi This 20th Day of May, 2019.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of;

1. Applicant in person.

2. M/s Nyauncho for the Respondent.