



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ANTI CORRUPTION AND ECONOMIC CRIMES DIVISION**

**ACEC REVISION NO 23 OF 2019**

**DR EVANS ODHIAMBO KIDERO.....APPLICANT**

**VS**

**REPUBLIC.....RESPONDENT**

**(From the ruling of Ogoti D. (CM) in ACEC No. 8 of 2019**

**RULING ON REVISION**

1. The applicant has by letter from his Advocates, Havi & Co. Advocates dated 6<sup>th</sup> May 2019 applied for revision of the bail and bond terms imposed on him in **ACEC No 8 of 2019, Republic v Dr Evans Odhiambo Kidero & 15 Others**.
2. He has been charged in the matter with the offence of conspiracy to commit an offence of corruption contrary to section 47A (3) as read with section 48 of the Anti-Corruption and Economic Crimes Act No 3 of 2003 to wit, conspiracy to defraud Nairobi City County of Kshs 58,000,000.00. He faces a second charge of unlawful acquisition of public property contrary to section 45 (1) (a) as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003 to wit, unlawful acquisition of public property, being receipt of Kshs 14,000,000.00 from Steven Kariuki Mburu (Deceased) whilst knowing the same was part of public property unlawfully acquired from Nairobi city County.
3. Thirdly, he is charged with dealing with suspect property contrary to section 47(2) as read with section 47(1) and 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 to wit, receiving Kshs 14,000,000.00 from the Cups Limited knowing or having reason to believe that the same was public property acquired by Steven Kariuki Mburu (Deceased) as a result of corrupt conduct; and finally, he faces a charge of money laundering contrary to section 3 as read with section 16(1) (a) of the Proceeds of Crime and Anti Money Laundering Act to wit, engagement in the purchase of motor vehicle Toyota Lexus KBR 001L for Kshs 14,000,000.00 while knowing or having reason to know that the said money formed part of the proceeds of crime that is Kshs 58,000,000.00 acquired by Kariuki Mburu (Deceased).
4. The applicant was released on a cash bail of Kshs 8 million and in the alternative a bond of Kshs 20 million. He paid the cash bail of Kshs 8 million but asks the court to revise the bail and bond terms as the quantum thereof is excessive, is not proportionate to previous terms given by the Learned Magistrate or directed by the High Court, and the terms amount to a constructive denial of bail and bond without compelling reasons. The application is premised on the provisions of Article 49(h) and 50(2) of the Constitution and sections 123, 123A, 362 and 364 of the Criminal Procedure Code, as well as the Judiciary's Bail and Bond Policy Guidelines.
5. Learned Senior Counsel, Mr. Orenge submitted on behalf of the applicant that though the trial court did grant the applicant bail, the standard of proportionality was not observed and in the applicant's view, the bail terms set were excessive. He observed that the applicants in **ACEC Revision No, 13 of 2019- Prof Muhammad Abdalla Swazuri & 23 Others v Republic 2019** had had their bail and bond terms revised. In the case at hand, the amount the applicant was charged in connection with was Kshs 68 million as opposed to Criminal Case No 32 of 2018 in which he is charged with respect to the amount of Kshs 213 million. Despite the amount in the prior charge being higher, according to Mr. Orenge, the applicant was released on bail of Kshs 2 million on charges that were similar to the present case except that in this case, there is an additional charge of money laundering.
6. Mr. Orenge submitted that the subordinate court should be predictable and consistent in the terms of bail granted to accused persons. He referred the court to recent decisions in which the terms of bail set in anti-corruption cases have been revised downwards by the High Court and urged the court to revise the terms of bail to Kshs 2 million or 1 million, noting that there were special circumstances in this case to warrant the reduction of bail. The special circumstances were that the applicant has had to seek the assistance of friends to secure the amount of Kshs 8 million in addition to the amount deposited as bail in ACEC Case No. 32 of 2018. He further submitted that the applicant was not a flight risk, that he had deposited his passport in court in an earlier case and then retrieved it for travel after obtaining leave to do so, and had thereafter returned it to court. There was no fear therefore that he would fail to appear in court.
7. The DPP was not present at the hearing of the matter on 8<sup>th</sup> May 2019. Section 364 (2) of the Criminal Procedure Code does not require

the presence of the parties on a revision. It provides that no order shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate. The Court had directed service on the DPP but Mr. Orengo conceded that this had not been done.

8. I have considered the application for revision of the applicant's bail and bond terms and the submissions of Mr. Orengo. I have also considered the terms of bond and bail set in recent rulings on revision by this court. Among such decisions are **ACC Rev No 7 of 2019- Moses Kasaine Lenolkulal v Republic** in which the Court reduced the bail and bond terms from Kshs 100 million and Kshs 150 million respectively to Kshs 10 million and 30 million respectively; **Prof Muhammad Abdalla Swazuri & 23 Others v Republic Criminal (supra)** in which bail and bond terms were revised from Kshs. 12 million and Kshs 30 million to Kshs. 7 million and 15 million respectively. See also in this regard the decision in **ACEC Revision No 12 of 2019- Reuben Marumben Lemunyete & Others vs Republic**.

9. In these revision applications, the court considered the factors that should be borne in mind in arriving at the amount of bond or bail to set in respect of an accused person. I need not rehash these factors in this ruling.

10. I note that the only reason advanced for the application for revision of the bail and bond terms is that the applicant has had to borrow the Kshs 8 million from friends at exorbitant interest and the sum paid is 'colossal to be tied up in court'. These are not statements made on oath by the applicant but are set out in the letter for revision by his Counsel. It appears from the chronology of events that the applicant was able to raise the cash bail amount immediately it was set, the ruling having been delivered at 3.00 p.m. on 30<sup>th</sup> April 2019 and the applicant released on bail the same day. There is nothing before the court to suggest the difficulty in procuring the cash bail amount that Mr. Orengo alludes to.

11. In any event, taking into consideration the trend in bail and bond terms set out above as well as the factors to be considered in setting these terms, I am not satisfied that the trial court imposed bail or bond terms that are excessive or prohibitive in the circumstances.

12. Accordingly, I find no merit in this application for revision, and I therefore decline to exercise the powers of revision in favour of the applicant.

**Dated Delivered and Signed at Nairobi this 10<sup>th</sup> day of May 2019**

**MUMBI NGUGI**

**JUDGE**