

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.296 OF 2019

EDWIN MWITI GACUNKU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Edwin Mwiti Gacunku has been charged in two cases *i.e.* **Nairobi Chief Magistrate's Criminal Case No.776 of 2017 (Milimani)** and **Nairobi Chief Magistrate's Court Criminal Case 2411 of 2018 (Milimani)**. When arraigned in court, the Applicant pleaded not guilty in both cases. In the first case, he was released on bond of Kshs.1 million with a surety of the same amount. In the subsequent case, he was ordered to pay a cash bail of Kshs.100,000/- to secure his release on bail pending trial. The Applicant has been unable to raise the subsequent cash bail. He pleads with the court to consolidate the bail terms in both cases so that the earlier bond term issued in **Criminal Case No.776 of 2017 (Milimani)** applies to the subsequent case.

During the hearing of the application, Mr. Otieno for the Applicant urged the court to consolidate the bond terms noting that the Applicant had been in custody for a period of one (1) year since he was charged in the subsequent case. He submitted that the bail report that was prepared that informed the court when granting him bail pending trial was favourable. He urged the court to take into consideration the fact that when the Applicant was released on bail pending trial in the previous case, he attended court without fail. Ms. Kimaru for the State opposed the application. She submitted that the two charges that the Applicant was facing in the two cases were different and therefore ought to be treated differently. Whereas she conceded that a pre-bail report had been presented to court, she noted that the report did not indicate that the Applicant was trustworthy. In the premises therefore, she urged the court to disallow the application.

The overriding principle that guides the court in applications such as the present one is whether the Applicant, if released on bail pending trial, will attend court on the dates that the cases are scheduled for trial. Of course, there are principles which this court ought to consider such as the serious nature of the offence the Applicant faces and whether the Applicant was likely to abscond from the jurisdiction of the court and also taking into consideration his antecedent conduct. Further, this court is required to take into consideration whether, if the Applicant is released on bail pending trial, he will commit another offence or will interfere with witnesses. In the present application, the trial courts released the Applicant on bail pending trial. The courts were satisfied that the Applicant fulfilled the requirements to enable the said courts release him on bail pending trial. In the considered opinion of this court, the said courts formed the view that the Applicant was not a flight risk. From his antecedents in the previous case where he was first released on bail pending trial, it was clear that the Applicant attended court when the trial was scheduled for hearing. The only issue that seems to have led to the detention of the Applicant in pre-trial custody is his failure to raise the bail terms in the subsequent case.

This court has carefully evaluated the facts of this case. It was clear to this court that the Applicant's application in which he seeks the consolidation of bond terms in the two cases is merited. This court is convinced that the Applicant will not be a flight risk if he is released on the consolidated bond terms of the two cases. His antecedents in the previous case are favourable. In the premises therefore, this court allows the Applicant's application as a result of which the bond terms imposed in **Nairobi Chief Magistrate's Criminal Case No.776 of 2017 (Milimani)** shall apply in **Nairobi Chief Magistrate's Criminal Case No.2411 of 2018 (Milimani)**. The Applicant shall attend court in the two cases without fail and abide by all the terms that are attached to the bond. It is so ordered.

DATED AT NAIROBI THIS 17TH DAY OF JULY 2019

L. KIMARU

JUDGE