



**REPUBLIC OF KENYA**

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

**MISC. CRIMINAL APP. NO. 66 OF 2018**

**BENSON KIMANI MAINA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant has applied for variation of his bail terms through a notice of motion dated 21/6/2018. His application is based on Articles 21 (1), 23 (1), 43 (1) (a), 43 (2), 49 (h) and 163 (3) of the 2010 Constitution of Kenya, sections 123, 124 and 125 of the Criminal Procedure Code (Cap 75) Laws of Kenya and all enabling provisions of the law. In addition to seeking an order for variation of his bail terms, the applicant also seeks an order to compel the Superintendent in charge of the prison at Narok to take him to the Narok General Hospital for special treatment.

2. The applicant has supported his application with 16 grounds. He has stated the following major grounds. Firstly, he has stated that he was charged with the composite charge of house breaking contrary to section 304 (1) (b) and stealing contrary to section 268 (1) as read with section 279 (b) of the Penal Code (Cap 63) Laws of Kenya. Additionally he has been charged with the alternative charge of handling stolen property contrary to section 322 (1) and (2).

3. He has also stated that he was admitted to cash bail of Kshs.75,000 or to execute a bond of Kshs.100,000 with a surety of a similar amount. He has further stated that his family has great financial constraints with an ailing father who has a young daughter to maintain. In his oral submissions in this court he submitted that he is unemployed and he suffers from dermatitis.

4. In addition to the grounds set out on the face of the notice of motion, the applicant has deponed to a 19 paragraphs supporting affidavit. In that affidavit he has deponed to the following major matters. He has replicated the same matters that are set out as grounds in support of his application in the notice of motion.

5. He has further deponed that he has elderly parents. He has also deponed that he is suffering from rare ailments, which cause weakness in his joints, chest pains, swollen face and wasting away of his skin.

6. The prosecution is not opposed to variation of his bail terms.

7. I have considered the grounds and the affidavit evidence in support of his application. I find that the cash bail of Kshs.75,000 is manifestly excessive in view of the fact that he is not employed. In the circumstances I reduce the cash bail to Kshs.25,000.

8. As regards his ailments I grant his order for treatment in a health facility that is in a position to treat him in addition to Narok General hospital.

9. The upshot of the foregoing is that the application for variation of his bail terms is granted. He may be released on a cash bail of Kshs.25,000/=. The officer in charge of the Government Prison facility is hereby directed to take the applicant to Narok General Hospital or to such other similar medical facility for treatment. Additionally his application fails in all other aspects.

**Ruling delivered in open court this 5<sup>th</sup> day of July 2018** in the presence of Mr. Langat holding brief for Mr. Kiongo for the applicant and Ms Nyaroita for the state.

**J.M. BWONWONGA**

**JUDGE**

**5/7/2018**