



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL MISC. CASE NO 14 OF 2018

REPUBLIC.....DPP

VERSUS

ABDLRAHMAN MOHAMED BWANAHERI.....ACCUSED

RULING

1. The application before me dated 2/5/2018 seeks orders that applicant be granted bail/bond pending the hearing and determination of criminal case no 81/2018, at the Principal Magistrate's Court Lamu. It is brought on the grounds; *inter alia* of bond was a total contravention of the applicants constitutional rights. That the applicant was aged 62 years and was trial and old.

2. The applicant is charged with the offence of robbery with violence **under section 296 (2) of the Penal Code**. The particulars of the offence are that on 12<sup>th</sup> March 2018 at around 0930 hours at Anisa Mosque are of Lamu West Sub – County within Lamu County while armed with a dangerous weapon namely a panga, he robbed Mwanaisha Bakuri Saburi an m-pesa attendant of her purse containing cash 60,000/= and assorted golden ornaments worth Kshs 63,000/= all valued at Kshs 123,000/= and during the time of such robbery used actual violence on the said Mwanaisha Bakiauri Saburi.

3. In the ongoing trial the trial court denied him his claim bail/bond.

4. His present application is supported by the affidavit sworn by his counsel Samson Gekanana. He deposes *inter alia* that the applicant is a well-known muslim preacher/teacher in Lamu aged 62 years and that he was a family man and incapable of harming the complainant.

5. At the hearing of the application on 11/7/2018 Mr. Gekanana submitted that the only reason that the trial court had denied the applicant bond was because the complainants stated they feared that the applicant would harm them if released.

6. Mr. Kasyoka counsel for the Respondent submitted that the State was not opposed to the application for bail. He however asked that the bail terms be sufficient.

7. I have considered the application in its entirety. I observe that the application is unopposed. I observe further that the complainant and victims of the alleged offence had raised fears in the trial court that the applicant was likely to harm them.

8. It is the constitutional right of the accused applicant to be released on bail pending trial except where there are compelling reasons. Such compelling reasons must be brought to the attention of the court by the State. No compelling reason has been stated in the present application. However as stated above. I am cognizant that the victims of the offence had voiced their fears before the trial court. I will address this in the conditions.

9. In the end I allow the application in the following terms:-

**(i) The accused is granted cash bail of Kshs. 300,000/= with one surety of similar amount.**

**(ii) The accused shall not, either by himself or through proxy, interfere with or intimidate prosecution witnesses, or their families. A breach of this condition shall lead to automatic cancellation of the bail.**

**(iii) The accused shall attend his trial and avail himself to the court whenever required.**

Orders accordingly.

**Ruling dated, signed and delivered at Garsen this 17<sup>th</sup> day of October, 2018.**

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**R. LAGAT KORIR**

**JUDGE**

**In the presence of**

Sharon CA

Mr. Gekanana for applicant

Mr. Kasyoka for respondent