



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 38 OF 2016

REPUBLIC.....PROSECUTOR

Versus

BENJAMIN MWENDA KARAU.....ACCUSED

RULING

[1] The significant order sought in the Motion dated 8th August 2018 is revision and/or variation of bail/bond terms given by the court herein. The application is expressed to be brought under **Article 29 and 49(1) of the Constitution 2010 and Section 364 of the Criminal Procedure Code and all other enabling sections of the law.**

[2] The application is premised on the grounds set out in the application and supporting affidavit of Benjamin Mwenda Karau sworn on 8th August 2018. It is contended that the reason why the accused person was denied bail/bond in 2016 and 2017 was inter alia that his life was at risk. It has been over two years and the situation on the ground has since changed. They argued that in the event he is released he and his family have made arrangements for an alternative place of board away from the place of the alleged offence and will comply with the terms given thereto. It was stated that the pre-bail report filed on 5th October 2016 gave positive remarks about being released on bond and the people willing to stand surety in his favour. He pleaded with the court that denial of bail would render him great injustice. For those reasons he seeks revision of the bond.

Prosecution calls for stringent terms

[3] This application was not opposed by the prosecution. except the prosecution in their letter dated 5th September 2018 has insisted on stringent bond terms which are:

- i. That the accused person be given bond with surety/ securities without option of cash bail
- ii. That the accused person upon grant of bond to stay away from and not to have any contacts with prosecution witness
- iii. That the accused person to find an alternative place of abode during the pendency of this case
- iv. That the accused be ordered to report regularly to Laare Police Station to monitor the progress.

[4] It has been stated time without number that under **Article 49(1) (h) of the Constitution** every arrested person has a right to be released on bond or bail on reasonable conditions unless there are compelling reasons not to. The prosecution has the burden of establishing compelling reasons. In this case, they have none and did not oppose release of the accused person on bond save upon stringent conditions. The accused has not voiced any opposition to the conditions being suggested by the prosecution.

[5] The foregoing notwithstanding, the constitutional demand is that terms of bond should be reasonable. Except, I should add that what amounts to "reasonable bond terms" depends on the facts of each case. The accused herein stated clearly that he will relocate to another place of abode. The would-be place of abode was not disclosed to the court or prosecution. In the circumstances, his attendance in court during trial will require clear directions and conditions. Accordingly, the option of cash bail is not feasible. Instead, he will be released on personal bond of Kshs. 200,000 with one surety of like amount. Related to what I have stated, it is prudent that he reports and I direct him to report to Laare Police Station once every fortnight. He will also inform the police of his new place of abode during his first report day. And, needless to state that a bond is issued on the understanding that the accused will not interfere with witnesses. I therefore warn the accused not to establish any contacts or liaison or in any manner whatsoever interfere with any of the prosecution witnesses during the pendency of this case. The application is meritorious and thus allowed based on the foregoing terms. It is so ordered.

Dated, signed and delivered in open court at Meru this 14th day of November 2018

F. GIKONYO

JUDGE

In presence of

M/S Mwaniki for Kiarie for state

Wamache for accused

F. GIKONYO

JUDGE