



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
MISC. APPLICATION CASE NO.36 OF 2016
(ARISING FROM CRIMINAL CASE NO.1123 OF 2016 SIRISIA)
MAURICE AMULIESE MUTAMBI.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT
RULING

1. By an application dated 28th day of November 2016 the applicant moved this Court seeking to be released on bond. He is currently facing a charge of robbery with violence in P.M.C.C. No.1123 of 2016 in Sirisia Court.
2. His bond application was denied by the trial Court for the reason that he is facing a similar charge in Mumias, there is imminent danger of him interfering with witness, the weapon of crime is still at large and there is likelihood that the accused will commit crime if released.
3. In his written submissions in support of the application the applicant cited Article 49 of the Constitution which he argues has been violated in denying him bond, in that having other cases ought not to stand on his way, the Prosecution did not carry out proper investigations before charging him, and the trial Court was biased.
4. In opposing the application Mr. Kamau for the State argued that there is prosperity of the accused committing yet another offence as he faces a similar charge in Mumias Case No.1147/2016, the incentive to abscond is higher, the pistol used in the spat of robberies has not been recovered and the security of the State is at risk.
5. No doubt the Constitution of Kenya guarantees the right to bail against any offence unless there are compelling reasons. The accused is well within his right to assert that he has a right to bail. However this right is not absolute and can be denied if the Court forms an opinion that there are compellable reasons to deny the applicant enjoyment of this right.
6. In considering whether to grant bail or not a Court has to balance several factors as the most important is to secure the attendance of the accused in Court and preserve evidence. The Court may consider issued but not limited to;

a. the nature of the charge

b. nature of evidence

- c. gravity of offence
- d. likelihood of interference
- e. whether or not the accused is a flight risk
- f. danger to the Community

7. In **Republic Vs Danson Mgunya & Kassim Sheebwana Mohammed Mombasa H.C.C.R No.26 of 2008** Ibrahim J (as he then was) held as follows;

“The Primary consideration is whether the accused person (will) attend Court and be available at the trial. All factors and facts and circumstances must be considered with this central Principle in mind”

In the said case Ibrahim JC relied on the Nigeria Supreme Court case **Alhaj Mujahid Dubuko Asari Vs Federal Republic of Nigeria SC 20A/2006** where the Court considered several factors in determining such an issue the same were listed as

- i. Nature of charge
- ii. Strength of the evidence which supports the charge
- iii. Gravity of punishment
- iv. The previous Criminal record of the accused if any
- v. The probability that the accused may not surrender himself for trial
- vi. Likelihood of interference with witnesses or he may suppress any evidence such as would incriminate him
- vii. Likelihood of further charges being brought
- viii. Probability of finding of guilt
- ix. Determination of protection of the accused

In **Ali Mcheni Ali alias Shee Lako Vs R. Misc. Application No.7 of 2011** Ojwang J (as he then was) in considering this same issue of bail stated;

“... my opinion, is that the several considerations are relevant to varying degrees...”

8. Having considered all the surrounding circumstances and factors I do not fault the trial Court. The applicant faces 3 similar offences of robbery with violence in the Case related to this application and 1 more in Mumias, it is not lost that he is likely to interfere with the witnesses, the fact that the weapon of Crime is out at large cannot be overlooked and with all the serious cases facing him it cannot be ruled out that the applicant is a flight risk as well.

9. I consequently reject the application.

DATED and DELIVERED at BUNGOMA this 14TH day of MARCH, 2017

ALI-ARONI

JUDGE