



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 74 OF 2015
BONIFACE MUTWIRI CHEMEAPPLICANT
VERSUS
REPUBLICRESPONDENT
RULING

1. On 2nd December, 2015, I granted the accused bond on the following terms:-

- a. ***Bond of Kshs.500,000/- with three sureties of similar amount in the alternative.***
- b. ***Cash bail of Kshs.1,000,000/-.***
- c. ***Not relevant.***
- d. ***Not relevant.***

2. On 26/1/2016 the accused through his advocate on record made an oral application for review of the bond terms on the basis that the accused person is a police officer whose income was Kshs.15,000/- per month and therefore could only raise Kshs.100,000/- in cash bail or bond of Kshs.200,000/- with one surety.

3. The state opposed the application and submitted that whereas the object of bond was to secure the attendance of the accused at the hearing the bond terms granted by the court were very reasonable.

4. Article 49(1) (h) of the Constitution of Kenya 2010 which now grants constitutional right to bond provides as follows:-

“An arrested person has a right to be released on bond or bail on reasonable conditions.”

5. What constitutes reasonable condition has not been provided for and has only been given in the Bail and Bond Policy Guidelines. It must be noted that what constitutes reasonable terms are looked at based upon the facts of each particular case. However Ochieng J in **High Court Misc Criminal Application No. 171 of 2012** Nairobi had this to say on the same:-

“On the other hand, it is also important that the court should not impose such conditions that the accused person should not have any difficulty in meeting them. If the conditions were very lenient an accused person may be tempted to abscond because he would not feel the pain of abandoning the bail or security deposited in court. It is therefore important that the court determining an application for bail pending trial should conduct delicate balancing act so as to get reasonable conditions for the particular case at hand.”

6. Having looked at bond terms granted in similar cases see:-

- I. **Republic v EVANS ONSONGO NYAKWERA High court of Kenya at Kisii Criminal case No. 80 of 2013** where Okwany J reduced bond of Kshs.2,000,000/- to Kshs.1,000,000/- with two (2) sureties.
- II. **Republic v JOSEPH THOMAS OLANG High Court of Kenya at Nairobi Criminal case No. 67 of 2013** involving an accused person who was alleged to be depended upon his mother who was alleged to be not well economically was granted bond of Kshs.2,000,000 with two sureties, one of Kshs.2,000,000 and the other of Kshs.500,000.

I am not persuaded that the bond terms granted herein are unreasonable.

7. I therefore find no merit on the application herein which I hereby dismiss.

DATED, SIGNED and DELIVERED at Nairobi this 10th day of February, 2016

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Magoma for the state

Mr. Ondieki for the accused

Accused present

Tabitha court clerk