



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 19 OF 2015
REPUBLICPROSECUTOR
VERSUS
JULIUS KAIGAI KAMANDEACCUSED
RULING

1. By a Notice of Motion dated 9/12/2015 under the provisions of Section 123, 124 and 125 of the Criminal Procedure Code and Articles 49(1) and 50 of the Constitution of Kenya, 2010 the appellant moved court for orders that the Honourable court be pleased to review and grant the Applicant Bail Bond on reasonable terms.
2. The Application was grounded on the grounds that the applicant being young has a young family still in school and finds himself on the wrong side being a village elder in altercation with changaa brewers and illicit operators while working with Area Chief.
3. The application was supported by his annexed affidavit allegedly sworn before George W. Wakahui advocate on 9th December, 2015 in which it was deponed that he is a family man and a father of three children aged 12 years, 8 years and 2 years respectively and at the time of the alleged commission of the offence, he was working with the chief as a village elder with one of his duties being helping curb illicit brews and illicit sale of alcohol and therefore there were people who were not happy with him and leading to him being implicated in the commission of the offence herein.
4. It was deponed that the accused if released on bond will not necessarily stay at Mukuru kwa Reuben and will therefore not be in opposition to interfere with witnesses in the case. He further deponed that he did not have a Kenya passport and is therefore not a flight risk.
5. It was further deponed that he had serious health complications since he suffers from peptic ulcers and chronic epigastris which gives him headaches, dizziness induce vomiting and passing blood-stained stool as a result of which he cannot consume beans and kale which are the main food at the Remand prison. He supported his medical condition by use of letter dated 17/7/2015 by **HYCINTH OLABA** in charge of prison Health Centre which recommends that the applicant seeks treatment while out of custody.
6. In denying the applicant bond, Ombija J had this to say:

“It is clear to me that the accused person lives in Mukuru kwa Njenga an expansive slum where houses are not numbered and hence it would be difficult to locate him in case he fails to attend court when and if required to do so. In the same vein he may be a flight risk given the gravity of the charge.

It is also clear to me that the accused person is a leader in the same said slum being a

leader thereof hence there is a real risk of intimidation of the witnesses by the accused.....”

7. It is against that holding that the application herein for review is founded based upon the contention by the accused person that if released on bond he does not intend to go back to the said slum and that the same will stay in his rural home.
8. In opposing the application Mr. Magoma submitted that the applicant had not demonstrated that the circumstances had changed since bond was denied by Justice Ombija whereas Mrs. Odembo for the applicant submitted that the accused person had provided details of his rural home where he intended to stay at if released on bond together with the medical report which were not placed before Justice Ombija and that the same is not a flight risk.
9. Under the provisions of Article 49 of the Constitution of Kenya 2010 bail is now a Constitutional right of every accused person and can only be denied if there are compelling reasons to do so and that the primary consideration of the court in granting or denying an accused person bail is whether the accused person will voluntarily and readily attend his trial.
10. I have had the advantage of looking at the medical report dated 17/7/2015 which was not placed before Justice Ombija and the affidavit of the applicant in which he had deponed that he undertakes to attend court if granted bail and being alive to the considerations under the Bail and Bond Policy Guidelines having noted that the State has not provided any evidence that the accused is likely to interfere with the prosecution witnesses and further being alive of the fact that at this point in time the accused person is considered innocent and therefore has a constitutional right which includes right under Article 43(1) (b) to the highest attainable standard of health which includes the right to health care services and in view of the letter from the medical officer in charge of Remand Prison herein wherein it is recommended that the accused be treated outside the prison.
11. I am of the considered view that the applicant has made up a case for Review of the order granted herein denying bail and would therefore allow the application herein and grant the applicant bail upon the following terms.
 - a. ***Bond of Kshs.1,000,000/- with two sureties of like amount.***
 - b. ***In the alternative cash bail of Kshs.500,000/-.***
 - c. ***Upon release, the accused person shall report to the Area Chief of Kigumo Location of MURANGA COUNTY immediately and shall be reporting to Area Chief after, every 30 days on the last Thursday of each subsequent month until final determination of this case in addition to reporting to the Deputy Registrar of this court after every 60 days at a date to be set by the said Deputy Registrar while approving sureties.***
 - d. ***The accused shall be treated at a medical facility of his choice and a detailed medical report submitted to the Deputy Registrar at each mention.***
 - e. ***In breach of any of the conditions herein the accused shall be placed in custody without any further order of this court.***

Dated, delivered and signed at nairobi this 10th day of march, 2016.

.....

J. WAKIAGA

JUDGE

In the presence of

Mr. Magoma for the state

None appearance Miss Odembo for the accused

Accused - present

Tabitha - court clerk