



**REPUBLIC OKENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO. 265 OF 2016**

**ERICK OTIENO ATANGA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant herein is currently facing two criminal trials before the Chief Magistrate's Court at Milimani. He had previously approached this court in Criminal Application No.127 of 2016 in which he requested for a consolidation of the bond terms in the two criminal files. The request was granted and the court ordered for his release on a cash bail of Kshs.200,000/- or a bond of Kshs.500,000/- with one surety of a similar amount. The surety was to be assessed by the trial magistrate in Criminal Case No.670 of 2015. The other trial is confined to Criminal Case No.1099 of 2015. In this application, he is requesting for reduction of bond terms claiming that the same were too high and unaffordable. Furthermore, the trial court's process of bond approval had been frustrated by the investigating officer who failed to approve the surety documents. In addition, he informed the court that he was married with six children all of whom depend on him. He also stated that he suffered from ulcers and the diet in the Prison was not conducive for the sickness.

It is trite that bond terms must always be commensurate with the charges an accused person is facing. In so consolidating the bond terms, the court considered this factor. In Criminal Case No.1099 of 2015, the Applicant faces a charge of theft of Kshs.650,000/- the property of First Community Bank of Kenya. In Criminal Case No.670 of 2015, he is charged with theft of Kshs.500,000/- the property of Rafiki Micro-Finance Bank. A look at those charges definitely demonstrates that the bond terms as consolidated are not only reasonable but lenient. In the circumstances, this court is disinclined to vary them.

As regard the frustration on approval of the bond terms, the submission by the Applicant is solely against no other view. As such, I would be hesitant to direct that the Deputy Registrar of this court assesses the surety before a letter is written by the trial magistrate or the executive officer of the Magistrate's Court in Criminal Case No.670 of 2015 on why the surety has not been approved this far. In the end, I direct that the said Learned Magistrate/Executive Officer in that case writes to this court no later than 23<sup>rd</sup> of September 2016 explaining the delay in the approval of the bond of the Applicant. The matter will be mentioned on 27<sup>th</sup> of September 2016 for this purpose. In the meantime, the request for reduction of bond is dismissed.

**DATED AND DELIVERED ON 14<sup>TH</sup> SEPTEMBER 2016**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of;**

***1. Applicant present in person***

**2. *M/s Atina for the Respondent***