



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CRIMINAL APPLICATION NO. 35 OF 2016**

**DAVID KARIUKI WANUTHU..... APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

**David Kariuki Wamuthu** has filed a Notice of Motion seeking that this court do review the bail/bond terms issued by the Principal Magistrate’s Court, Tigania in CRC 2454/2015. The applicant contends that he was granted cash bail of KShs.1,000,000/= which the trial court has refused to review despite numerous requests; that his right to be presumed innocent before being found guilty is compromised and his right to reasonable bond has been denied; that he has a fixed abode in Mithiga Sub-Location in Laikipia County; that he suffers from diabetes and hypertension and his health is deteriorating due to the incarceration. He attached a copy of a medical report from Meru Level 5 Hospital.

Mr. Mulochi, Learned Counsel for the State did not oppose the application.

The applicant faces 9 counts which include making false statement with intent to mislead a Public Officer contrary to Section 20 of the Prevention of Terrorism Act; making a false document contrary to **Section 349 of the Penal Code**, uttering a false document contrary to **Section 355 of the PC**.

The offences that the applicant faces are bailable. The grant of bond is an exercise of judicial discretion. In granting bond, the court considers several factors, the key consideration being that the accused will attend court if released. Other considerations are that the court considers the seriousness of the offence, the likely sentence; whether the accused will interfere with witnesses; the accused’s antecedents and conduct. After considering all these facts, the court will exercise its discretion whether or not to grant reasonable bond terms. The grant of bond should not be so harsh as to amount to a denial of the same.

In this case, I was not able to read the lower court’s record to ascertain whether or not the applicant had requested the court to review the bond terms.

I do take notice that the accused faces many charges; they are serious in nature and that being the case, the likelihood of flight is high. I however think that the bail terms are so high that they amount to a denial of the same. For this reason, I will review the bond terms downwards and grant the accused bond of KShs.500,000/= plus one surety of the same sum or cash bail of Kshs.250,000/=. Mention before Tigania PM’s Court on 14/11/2016.

**DATED, SIGNED AND DELIVERED THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2016.**

**R.P.V. WENDOH**

**JUDGE**

**8/11/2016**

**PRESENT**

Mr. Mulochi for Respondent/State

Present-in-Person, Accused

Ibrahim/Peninah, Court Assistants