

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISCELLANEOUS APPLICATION NO. 116 OF 2016

REPUBLICPROSECUTION/RESPONDENT

VERSUS

ALEX MWALUKO MULONZIACCUSED/APPLICANT

RULING OF THE COURT

1. The application before the court is a Notice of Motion dated **5th October, 2016** seeking as the main prayer that he applicant/accused bond terms be varied into reasonable cash bail terms.

2. The application is premised on the grounds set out therein, that the applicant was granted bond of Kshs. 500,000 with one surety of a similar amount on **29th August, 2016**; and the applicant applied for a review of the bond terms which were reset at Kshs. 250,000 with no option of cash bail on the **5th September, 2016**. The time within which to appeal against the order has since lapsed but the applicant is desirous of appealing against the order and seeks to apply for a variation of the bond terms into cash bail as he is unable to get a surety. The Applicant's case is that the court has immense discretion to grant the prayers sought. The applicant states that he will easily turn up for the trial wherever required by the court to do so. The applicant states that he is a hardworking young electrician who has a fixed place of abode and he is not a flight risk, he comes from an indigent background where he is the only breadwinner of his family and the extended family. The applicant's case is that the circumstances and nature of the complaint against him is more of a contractual dispute than a criminal act.

3. The applicant's counsel **Mr. Mwema** submitted that a cash bail of Shs. 50,000= would suffice, while **Mr. Machogu** counsel for the State submitted that if cash bail was to be given, it should not be less than Shs. 100,000=.

4. I have considered the application. The applicant has already been given bond, originally at Shs. 500,000= with one surety of similar amount, which was later reduced to Shs. 250,000 with one surety. So in effect, the lower court has determined that the applicant is not a flight risk.

5. There is also the Probation Officer's Report dated **5th September, 2016** which supports the applicant's release on cash bail. This court takes notice that the intention of cash bail or bond is always to secure the freedom of an accused person pending the hearing of the case. If bond or bail terms are made completely unaffordable by the accused person, then the above objective will be lost. The applicant is a family man and is engaged in self businesses. There is no possibility of him absconding bail or bond.

6. In my view, the application for review is merited, and I allow it in the following term;

a. The accused is herewith released on cash bail of Shs. 80,000=.

Orders accordingly.

DATED AND DELIVERED AT MACHAKOS THIS 10TH DAY OF NOVEMBER, 2016.

E. OGOLA

JUDGE

In the presence of:

Mr. Mukule holding brief for Muema for accused

No appearance for State

Court Assistant - Mr. Munyao