

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL REVISION NO. 62 OF 2015

IN THE MATTER

OYUGIS SENIOR PRINCIPAL MAGISTRATES COURT

CRIMINAL CASE NO. 276 OF 2015

AND IN THE MATTER OF

LILIAN AKINYI ALEX

RULING

1. This matter was brought to my attention by the Officer in Charge, Kisii GK Prison for me to examine the record of proceedings before the subordinate court and satisfy myself of the legality and propriety of the findings and orders made therein and exercise the powers of revision under **section 362** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*.
2. **LILIAN AKINYI ALEX** was charged with the offence of burglary contrary to **section 304(2)** and stealing contrary to **section 879(b)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. It was alleged that on the night of 5th May 2015 in Oyugis Township, Rachuonyo South District within Homa Bay County, she broke and entered into in a store of **CAREN ACHANDO ANGERA** with intent to steal and did steal therein 15 fish and 10 litres of cooking fat the property of the said **CAREN ACHANDO ANGERA** all valued at **Kshs. 16,300/-**.
3. She was arraigned in court on 8th May 2015, pleaded not guilty and remanded in custody until 15th July 2015 when the case comes up for hearing. In order to secure her release, the learned magistrate directed her to furnish a bond of Kshs. 50,000/- with a surety of the same amount or deposit cash bail of Kshs. 25,000/-.
4. Under **Article 49(1)(h)** of the Constitution, an arrested person has the right to be released on bail unless there are compelling reasons to warrant such denial. The said provision states as follows;

An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
5. The setting of bail terms is therefore discretionary and the power to exercise such discretion vests in the trial court. It cannot be gainsaid that such discretion must be exercised judiciously to meet the ends of justice. The court will normally consider a range of factors including the gravity of the offence, the severity of the sentence in the event a conviction is entered, the accused's character and antecedents, if any, whether the accused is a flight risk, the likelihood of interference with witnesses, the need to protect witnesses amongst other factors. In considering these factors the court must always remember that it is applying a provisions of the Constitution, in which case, it must, in accordance with **Article 20(1)(b)** of the Constitution interpret and apply the right in a manner that most favours enforcement of the right or fundamental freedom.
6. Applying the above principles, I find that the bond and bail terms imposed by the learned magistrate were excessive and unreasonable and the effect thereof was to deny the accused the right to bail. The learned magistrate did not take into account the nature of the offence and the

value of the goods allegedly stolen. There was no evidence that the accused was a flight risk who would not attend her trial if released on bail.

- 7. In the circumstances, I revise and set aside the bail and bond terms granted on 8th May 2015 and direct that the accused, LILIAN AKINYI ALEX appear before the trial magistrate forthwith for variation of bond terms in light of the principles I have outlined.**

DATED and DELIVERED at HOMA BAY this 6th day of July 2015.

D.S. MAJANJA

JUDGE