



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISC. CRIMINAL APPLICATION No. 14 OF 2014

LESIT, J.

WILLIAM MWANGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The application is a Notice of Motion dated 14th May, 2014 brought under Articles 65(6) and 7; 49(1) (h) of the Constitution, and sections 357,362,365,366 and 367 of the Criminal Procedure Code. Essentially the applicant seeks:
 - a. **That the orders made by Acting Principal Magistrate Mr. D. W. Mburu in Criminal case No. 308 of 2014, on the 24th February, 2014 cancelling the Applicant's bond in Criminal case No. 1468 of 2012 be set aside.**
 - b. **That the court do admit the Applicant to bail in Criminal case No. 308 of 2014.**
 - c. **That this court do make any other order it deems fit in the circumstances.**
2. The application is grounded on an affidavit sworn by the Applicant. The gist of the affidavit is to the effect the Applicant was the 3rd accused in Criminal case No.1468/2012 in which both his co-accused are deceased.
3. The Applicant deposes that on 18th December, 2013 the investigating officer of that case, Mr. Mugambi informed him that the said case would not proceed as his co-accused had died. The Applicant deposes that the officer asked for payment of 20,000/= in order to enable him get back his security, which he gave and got the security back. He deposes that when he was charged in Criminal Case No. 308 of 2014 the same officer testified in court that the applicant had jumped arrest issued against him.
4. Mr. Kiogora for the Applicant urged the court to find that the Applicant was misled by a police officer, one Mr. Mugambi to give him Kshs.20,000/= so that he could have his security bond returned to him since his case would not proceed as his co-accused in Criminal case No.4068 of 2012 had died . Counsel urged that on the strength of Applicant's arrest in Criminal 308 of 2014, Mr. Mugambi alleged that the Applicant had jumped bail in 4068 of 12 causing the learned trial magistrate to deny the Applicant bail.
5. Mr. Murage, Prosecution Counsel left the matter with the court to decide whether to grant the payers sought in the application or not.
6. I have considered the Applicant's application together with his supporting affidavit and

- submissions by counsel. I have considered the proceedings in Meru CMCRC No.1468/12 and Meru CMCRC. No. 308/14. In 1468/12 the Applicant was the 1st accused and was charged with two others with one count of Attempted Robbery contrary to section 297(2) of the Penal Code. The offence is alleged to have been committed on 4th October, 2012.
7. In case No. 308/14 the Applicant is charged alone with others not before court of Robbery with Violence contrary to section 296(2) of the Penal Code. The offence was allegedly committed on 17th February, 2014.
 8. The Applicant was on bond in 1468/12. The bond was granted to him and his co-accused on 24th October, 2012. The case was scheduled for hearing on 18th December, 2013 but the Applicant did not show up on that day. A warrant of arrest was issued against him.
 9. On 24th February, 2014 the Applicant was taken to court under warrant. He gave same explanation as in his affidavit in support of this application, that the investigating officer, Mr. Mugambi had returned his security for the bond in that case, and had informed him that his case ended when his co-accused died. The learned trial Magistrate rejected the explanation and cancelled Applicants bond.
 10. As a result of cancellation the Applicant's bond in 1468/12 the court decided to consider bail in 308/14. It is for the decision to deny bail in both cases that the Applicant came to this court.
 11. The principles to be considered by a court before granting bail pending trial were spelt out in *Nganga VS Republic 1985 KLR 451* where Chesoni,J, as he then was held:

“1. The court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should consider the following factors

- a. **In principle, because for the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail unless it is shown by the prosecution that there are substantial grounds for believing that:**
 - i) **The accused will fail to turn up at his trial or to surrender to custody;**
 - ii) **The accused may commit further offences; or**
 - iii) **He will obstruct the course of justice.**
- b. **The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;**
 - (i) **The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;**
 - (ii) **The strength of the prosecution case;**
 - (iii) **The character and antecedents of the accused;**
 - (iv) **The likelihood of the accused interfering with prosecution witnesses.**

2. Where more than one person are jointly charged with a criminal offence, the case of each accused person must be examined on its own facts and this applies also to an application for bail in which each accused person's application is to be considered on its own facts, circumstances and merit.”

12. The learned trial magistrate found that the Applicant had jumped bail in 1468/12 and so cancelled his bond. Consequently the Applicant could not be considered for bail in 308/14. That is the reason he has come to this court.

13. This court has original jurisdiction in criminal cases. Consequently, the application before this court is considered as a fresh application. As demonstrated in the case cited herein above, the matters relevant for consideration in an application for bail include a consideration whether the accused is likely to turn up for his trial and also whether he is likely to re-offend.
14. In the Applicant's case, he not only jumped bail in an earlier case, but he also re-offended. Even though a person should be considered innocent until proved guilty, being arrested for a different offence while on bond in another case is prima facie proof that the accused person has re-offended.
15. For the two reasons of re-offending and jumping bail, the Applicant is undeserving to be considered for bail, even though his offence is bailable, and in spite of bail being a constitutional right. For these reasons I find that the application has no merit and is dismissed. The Applicant should remain in custody during the pendency of his case.

DATED AND DELIVERED AT MERU THIS 17TH JULY, 2014

LESIT, J,

JUDGE