



Republic v Obiero (Criminal Case 1248 of 2023) [2023] KEMC 261 (KLR) (19 July 2023) (Ruling)

Neutral citation: [2023] KEMC 261 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE 1248 OF 2023
PA NDEGE, SPM
JULY 19, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

EVANS ORINA OBIERO ACCUSED

RULING

1. It is alleged herein that the accused herein was on 25th May of 2023 at 0900hrs found along Naishi-Nakuru road within Nakuru county, jointly transporting forest produce namely 80 bags of charcoal valued at Kshs 120,000 using a motor vehicle Reg no. KDA 075W ISUZU Lorry, white in color, without a charcoal movement permit from Kenya forest service. The accused was granted a cash bail of Kshs 500,000 upon pleading not guilty with 1 surety of similar amount. However, he now claims that his family is unable to raise the said amount despite their efforts to do so.
2. The accused is requesting for a review of cash bail and bond term with consideration of the subject matter in hand of Kshs 120,000. The accused relied on the provisions of rule 20 of the forest (charcoal) rules 2009, which provides that any person found guilty of the offence, the accused is charged with a liable fine of Kshs 10,000 or imprisonment for a period not exceeding 3 months. The accused herein prays for a cash bail review of Kshs 20,000.
3. The principle law on bail- bond is in article 49(1)(h) of the constitution of Kenya 2010, which gives the accused person the right to be released on bond or bail, on reasonable conditions, p[pending a charge or trial unless there are compelling reasons not to be released.
4. At the same time, the criminal procedure code empowers a court to admit a person accused of offence to bail or release on executing a bond with sureties for his or her appearance. Further, the criminal procedure code provides that the amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive.



5. In the case of *Republic v Robert Zippor Nzilu, Criminal Case No. 4 of 2018*, It is trite law that granting bail entails the striking of a balance of proportionality in considering the rights of the applicant who is presumed innocent on the one hand and the public interest on the other. The cornerstone of the justice system is that no one should be punished without the benefit of due process. Incarceration before trial, when the outcome of the case is yet to be determined, cuts against this principle. The terms as set may therefore appear high by any measure or standard and indeed the same can easily be misconstrued as a punishment.
6. The accused submits that bond terms should not be seen to defeat the sacred doctrine of presumption of innocence; that bail ought not to be used as a punishment but rather as a means to secure the accused person's attendance in court.
7. Bail and bond decision making is however often guided by certain principles such as the right to be presumed innocent unless proven guilty, the accused person's right to liberty, the accused obligation to attend trial, right to reasonable bail and bond terms, balance between the rights of the accused person and the interests of justice and consideration for the rights of victims.
8. Bail or bond conditions should be appropriate to the offence committed and consider the personal circumstances of the accused person. In the circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case. In *Andrew Young Otieno v Republic (2017) eKLR*, the court agreed with the Applicant that the purpose of imposing bond terms is to secure the attendance of the accused before the court during trial. The terms imposed by the trial court should not be such that it amounts to a denial of the constitutional right of the accused to be released on bail pending trial. The trial court must consider the circumstances of each accused when determining bond terms to be imposed." In the present application, it was clear to this court that the accused was unable to raise the bail imposed on him which would obstruct him from his right to be given a reasonable bail term. The accused has stated that he will maintain his known place of abode and he is not a flight risk.

Determination

9. Considering the above principles and factors, in determination, the accused should be issued with a reasonable amount by inclining towards the circumstances and facts in this case, that the same should not be seen to make one suffer and cause injustice in a court process for his preclusion being that he was not able to meet the said amount. The accused may therefore be released on bond of Kshs. 60,000 with one surety of a like sum or cash bail term amounting to Kshs 20,000.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF JUNE, 2023.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

