



**Karanja v Republic (Miscellaneous Criminal Application E112 of 2024)
[2024] KEHC 9247 (KLR) (Crim) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E112 OF 2024
K KIMONDO, J
JULY 31, 2024**

BETWEEN

GEORGE KAGO KARANJA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This revision seeks to overturn the order of the learned trial magistrate dated 20th February 2024 which cancelled the applicant's bond. Those proceedings were in Makadara Chief Magistrates Criminal Case Number 2044 of 2019 Republic v William Macharia Mwangi & George Kago Karanja (hereafter the first criminal case). His co-accused is not the subject of this ruling.
2. The applicant and his co-accused were charged with forcible entry contrary to section 90 of the [Penal Code](#). They pleaded not guilty and were released on cash bail of Kshs 100,000 each.
3. I should point out that the applicant faces a separate criminal case at Makadara but before a different magistrate in Chief Magistrates Criminal Case Number E431 of 2024 Republic v George Kago Karanja (hereafter the second criminal case).
4. In that second case, the charges are for assault, malicious damage to property and causing disturbance contrary to sections 251, 339 (1) and 95 (1) (b) of the Penal Code. He was again released on bail of Kshs 20,000.
5. Trouble seems to have started when, in the course of proceedings in the first criminal case, the prosecution accused him of intimidating or interfering with witnesses. The circumstances related to events that took place in November 2023 or 6th December 2023. The applicant argues that those events



are the subject matter of the second criminal case and it was thus unjust to rely on them to revoke his bail in the first criminal case.

6. Those matters are pleaded at length in the notice of motion dated 11th April 2024. They are buttressed by an affidavit of even date and written submissions dated 3rd June 2024.
7. The application is contested by the Republic through grounds of opposition and written submissions all dated 19th June 2024. Learned Prosecution Counsel, Mr. Mutuma, submitted that the right to bail is not absolute; and, must be delicately balanced against the rights of witnesses or victims. In a synopsis, he justified the decision by the lower court to cancel the bond.
8. On 21st June 2024, I heard further arguments from both learned counsel for the disputants.
9. I take the following view of the matter. Under Article 165 (6) of the *Constitution* as read together with sections 362 to 364 of the *Criminal Procedure Code*, the High Court is imbued with wide powers to revise the orders by the subordinate court.
10. By dint of Article 50 (2) (a) of the *Constitution* the applicant is presumed innocent. Further, under Article 49 (1) (h) as read together with section 123A (1) of the *Criminal Procedure Code*, he is entitled to bail unless there be compelling circumstances.
11. In this case, the applicant was granted bail in both criminal cases. So, the only live question now is whether the learned trial magistrate was entitled to recall the bond in the first criminal case.
12. I called for the original records of the lower court. In the charge sheet for the first case, the particulars are as follows-

That on 8th June 2019 at Giathieko in Kasarani Division, in order to take possession thereof jointly entered Karanja Kago's farm LR No 14628/73 in a violent manner by demarcating the said piece of land of Mary Wanjiku Karanja as grant administrator.

13. From the impugned ruling dated 20th February 2024, it is clear that the complainant, Mary Wanjiku, is the mother of the applicant. She testified earlier as PW1 and the trial is at the tail end. It is during the pendency of this first case that she informed the court about threats to her life or the family by the applicant.
14. In view of the fact that the case is still pending, it would be prejudicial to delve any deeper into the merits of those claims or the case itself. But I can safely state that the complaint of witness interference or intimidation was made by Mary Wanjiku. Never mind that it related to events of 6th December 2023 and which may also be the subject of the second criminal case.
15. The learned trial magistrate, A. Mwangi, PM, in her considered ruling was satisfied from the materials before her, including some police investigations, that the applicant had intimidated or interfered with witnesses.
16. At page 4 of the typed ruling, the learned magistrate stated-

PW1, the mother to the 2nd accused states she is apprehensive for her life because the 2nd accused allegedly sent goons to her meeting out of which her daughter Monica Ngendo was injured. Inspector Veronica confirms that their station investigated these allegations which resulted in the 2nd accused being charged in CR E431 of 2024. The 2nd accused on his part denies the claims and states that he was framed.



17. The learned trial magistrate then reviewed the law on bail and the recent authorities on the subject including *Republic v Joktan Mayende & 3 others*, High Court, Bungoma Criminal Case 55 of 2009 [2012] eKLR. Coming to her main decision at page 5 of the ruling, she found as follows-

The court has a mandate to consider the safety of victims....I am alive to the fact that the new charges in CR E431 of 2024 remain allegations under the doctrine of presumption of innocence till proven guilty. However, given that the 2nd accused is closely related to the complainants I find that justice is best served if he is remanded in custody till the conclusion of the matter to avoid escalation of incidents such as those that occurred in November 2023 which the 2nd accused confirms albeit denies involvement.

18. I have said enough to debunk the submission by learned counsel for the applicant, Mr. Gikandi Ngibuini, that the incidents of November 2023 or 6th December 2023 were completely delinked from the issues in the first criminal case or that they were confined exclusively to the second case. Granted those circumstances, it is immaterial that the two criminal matters are proceeding in separate courts at Makadara before A. Mwangi, PM and T. Gesora, CM.

19. I have also kept in mind the provisions of the Victims Protection Act and which the trial court dealt with at length. Section 10 deals with the rights of victims and particularly their safety. It provides as follows-

A victim has a right to-

- a) Be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse;
- b) Have their safety and that of their family considered in determining the conditions of bail and release of the offender; and
- c) Have their property protected.

20. In all the circumstances of this case, I cannot say that the learned trial magistrate acted capriciously or in an arbitrary manner. She heard all the parties before exercising her discretion to revoke the applicant's bail. I have set out in detail her reasons for the decision and which I agree with. I am thus unable to impeach the correctness, legality or propriety of those findings.

21. The upshot is that that the applicant's request for revision contained in the notice of motion dated 11th April 2024 is not merited. It is hereby dismissed.

22. The original lower court file and records shall be immediately returned to Makadara Chief Magistrates Court together with a certified copy of this ruling.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of:

Mr. Gikandi & Ms. Aluoch for the applicant instructed by Gikandi Ngibuini & Company Advocates.

Ms. Awino for the respondent instructed by the office of the Director of Public prosecutions.

Mr. Edwin Ombuna, Court Assistant.

