



**Republic v Museshi (Criminal Case E038 of 2021)
[2024] KEHC 9749 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9749 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE E038 OF 2021**

**FROO OLEL, J
JULY 30, 2024**

BETWEEN

REPUBLIC RESPONDENT

AND

PRAXIDIS NALIAKA MUSESHI RESPONDENT

RULING

A. Introduction

1. The applicant, who is the 2nd accused in this matter filed the notice of motion application dated 20th September 2023, pursuant to provisions of Article 49(1),(h), 50(2),(a) & 258 of *the constitution* of Kenya , 2010, Section 123(3) & 364(1),(b) of the criminal procedure code and all other enabling provisions of law. The Applicant seeks for orders that the Honourable court be pleased to set aside/ vacate/quash and/or review the cash bail terms given by Honourable Justice G.V. Odunga, and be pleased to reduce the cash bail granted to her. She also prayed that the court be further pleased to remove the condition for surety of similar amount.
2. The application was supported by the grounds on the face of the said Application and the supporting affidavit of the Applicant, where she did depone that Honourable Justice G.V. Odunga had granted her cash bail of Kshs.100,000/= with one surety of similar amount. Though the said cash bail terms were not very harsh, she could not afford the same since she was in custody, and her single mother who was also not in gainful employment had only managed to raise Kenya shillings fifty thousand only (Kshs.50,000/=) to secure her release.
3. Her relatives too, where not supportive and had abandoned them, from the time of her arrest and she could therefore not get a surety. The applicant therefore prayed that the bond terms be reviewed downwards and if released, she would stay with her mother and ensure she attends court as and when required to do so. The applicant therefore pleaded with court to release her on cash bail with no surety.



4. The ODPP/Respondent did not file any response and left it for the court to make a determination. The victim's family however opposed this Application and the sister of the deceased one DOROTHY JEMATOR KIMENGECH, did file her replying affidavit dated 12th March 2024, where she deponed that as a family they were opposed to this application as the bond terms already granted were reasonable and fair. The circumstances under which the said bond terms were granted to the applicant had not changed drastically to warrant a change or review of the bond terms earlier granted and nor could they said bond terms be termed as harsh or excessive.
5. The said deponent further averred that the applicant had no fixed abode and was likely to be a flight risk should more lenient terms be granted, especially after confirming the she was of age, but had not obtained her national identity card. The probation department report on bond terms had confirmed that the applicant's mother was willing to meet bond terms, if granted and it had not been proved otherwise. The victim family therefore urged the court to dismiss the said Application.

B. Determination

6. I have considered the Application, its supporting affidavit, the replying affidavit of the victim family and submissions filed and find that the only issue which arises for determination is whether the Applicants bond terms should be reduced further.
7. Vide a comprehensive ruling dated 19th May 2022, Honorable Justice G.V.Odunga did consider the applicants bond application and granted her bond of Kshs.500,000/= with one surety of a similar amount to be approved by the deputy registrar of the court. The applicant was unable to raise the bond terms and on 3rd August 2022 the learned judge further reduced her bond terms to Kshs.100,000/= with one surety of similar amount.
8. Section 123(2) of the criminal procedure code does state that
 - “(2) The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive.”
9. In addition section 123A of the said criminal procedure code also provides that;
 - (1) Subject to Article 49(1)(h) of *the constitution* and notwithstanding section 123, in making a decision on bail and bond, the court shall have regard to all the relevant circumstance's and in particular;
 - a) The nature and seriousness of the offence;
 - b) the character, antecedents, associations and community ties of the accused person;
 - c) the defendants record in respect of the fulfillment of obligations under previous grants of bail; and;
 - d) The strength of the evidence of his having committed the offence

Any person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person;

Has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody; Should be kept in custody for his own protection.”



10. The applicant herein had been grant bond, and the said bond terms were further reviewed on 3rd August 2022. By this application she has applied for a second review of the bond terms and seeks to have the cash bail amount to be lowered and she be release without a surety.
11. In the case of *Kimanzi and Another Vs Republic, Criminal Revision 172 of 2022*, KLR, The Judge therein guided by the court decision in *Republic Vrs Diana Suleiman said & another (2014)*, did state as follows with regard to matters relating to review of bond terms.

“..... The changed circumstances test is one of common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court of justice must restore for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused.”

12. Considering, the matter at hand, the serious nature of the offence levelled as against the applicant, the pre bail report filed herein, the victim family interest I do find that the reasons advanced for review of bond terms are not convincing. The bond terms already in place are extremely fair and the court must have mechanisms to ensure the applicant attends court and that is by having a surety, who can be called to explain her absence in the event she is released on bond and fails to attend court. Further, the bond terms granted are not excessive and therefore the same cannot be reduced further. To do so would be a travesty of justice to do so.

C. Disposition

13. The court therefore finds that the application dated September 20, 2023 lacks merit and the same is dismissed.

Ruling written, dated and signed at Machakos this 30th day of July, 2024.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Teams this 30th day of July, 2024.

In the presence of;

Appellant present from Machakos Women prison

Ms Otulo for ODPP

Susan/Sam Court Assistant

