



REPUBLIC OF KENYA



**Bosire v Republic (Criminal Case E052 of 2022)
[2024] KEHC 9047 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E052 OF 2022
PN GICHOHI, J
JULY 25, 2024**

BETWEEN

IBRAHIM NZURI BOSIRE ALIAS SOKORO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The background of this ruling is that Ibrahim Nzuri Bosire (herein referred to as the Applicant) was charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the offence are that on the 10th day of September 2022 at Soweto village in Mawingu Sub Location in Kuresoi North Sub- County within Nakuru County murdered Jane Njeri Kuria.
2. He denied the charge before H.K. Chemitei J and a plea of “Not Guilty” was entered on 3rd October 2022. He was granted a bond of Kshs. 500,000/= with a surety of similar amount.
3. His Counsel later sought bond review before T. A. Odera J and vide a ruling dated 4th July 2023, the Court declined to review the bond terms. The Applicant has now moved this Court vide a Notice of Motion application dated 16th April 2024 seeking review of the Ruling dated 4th July 2023 which upheld the initial bond terms of Kshs. 500,000/= .
4. The main grounds on the face of the application are that:-
 1. The Applicant has chronic chest problems that require specialised treatment and proper management.
 2. As a result of the condition , he has been in and out of hospital for treatment for a better part of last year.
 3. The Applicant is a young person who recently graduated from Mogotio Vocational Training Centre and continued to stay in custody has put on hold his carer progression



4. Given his incapacity to raise the bond of Kshs. 500,000/=, he remains in custody in breach of his constitutionally guaranteed right of presumption of innocence.
5. In support of that application is the Applicant's affidavit where he gave a chronology of the events since his admission to bond on 3rd October 2022 emphasising that all his efforts to raise the bond terms granted have been unsuccessful.
6. That as a consequence, he made oral application through his counsel on 28th February 2023 but it was declined on 4th July 2023. That led to the second application for review which was also denied and which is now the subject of this ruling.
7. He deponed that by granting him stringent bond terms, the trial court has in effect denied him his right to be released on bail pending trial and the right to be presumed innocent unless proved guilty, particularly considering the reasons contained in paragraph 7 of the impugned ruling.
8. Referring himself as a person of meagre means and one who depends on menial jobs to provide for himself and his family, he deponed that he is aggrieved by the exorbitant bond, considering further that his health is not good as he suffers from a chronic chest problem that requires specialised treatment that is not available in remand.
9. In his replying affidavit filed on 25th June 2024 and sworn by James Kihara , the Respondent acknowledged the previous attempts by the Applicant to have the bond terms of Kshs. 500,000/= reviewed and in particular, he emphasised on the application made on 28th February 2023 and which was declined.
10. He deponed that upon being interviewed by the probation officer on 14th March 2023 for purposes of pre-bail report, the Applicant's family confirmed that they were in a position to secure his bond for him and that led the Court to issuing the impugned bond terms.
11. Regarding the Applicant's medical condition, the Respondent deponed that report availed to that effect and there is no communication from the Prison that the Applicant cannot be treated while in custody.
12. In regard to the Applicant's proposal for a bond of Kshs. 100,00/= with a surety of similar amount , the Respondent deponed that such terms would not suffice to secure the Applicant's attendance and was apprehensive that the Applicant would abscond upon release on the said terms. In the circumstances, he proposed a bond of Kshs. 250,000/= with two sureties of similar amount.
13. In rejoinder, the Applicant urged the Court to consider its records and that the Applicant has occasionally failed to attend Court on account of being in hospital. It was submitted that bond is not mathematical and urged the Court to consider the Applicant's proposal as even the pre-bail report revealed his status.

Determination

14. This Court has considered the arguments by the parties herein. The *Judiciary Bail and Bond Policy Guidelines* outlines the general principles to guide bail and bond decision-making. These are that :-
 - a. The right of accused person to be presumed innocent.
 - b. Accused Person's Right to Liberty.
 - c. Accused's obligation to attend trial.



- d. Right to Reasonable Bail and Bond Terms.
 - e. Bail determination must balance the rights of the accused persons and the interest of justice.
 - f. Consideration for the rights of victims.
15. During the hearing of the first application for bond review, the Court called for a bail report for consideration and it was availed. On unaffordability of bond terms, the Court has accessed the bail report filed on 11th March 2023 and at the section on the “ability /means to raise bond terms,” the report reads:-
- “The accused has a strong social capital among his family who wish to stand surety for him. The father to the accused Simon Bosire wishes to be tasked with the responsibility of ensuring the accused attends court as required.”
16. By calling for that report, the Court must have considered the Judiciary Bail and Bond Policy Guidelines which outlines the general principles to guide bail and bond decision-making and these are that :-
- a. The right of accused person to be presumed innocent.
 - b. Accused Person’s Right to Liberty.
 - c. Accused’s obligation to attend trial.
 - d. Right to Reasonable Bail and Bond Terms.
 - e. Bail determination must balance the rights of the accused persons and the interest of justice.
 - f. Consideration for the rights of victims.
17. Regarding the issues raised here by the Applicant including the right of accused person to be presumed innocent, this Court has looked at the trial Court’s ruling where it held:-
- “In this case, bond was not objected to and the same was granted. Accused now seeks review of the same downwards . The bail report indicates that the family of the accused wishes to stand surety for him and ensure that he comes back to court. I have considered the application the capital nature of the offence accused is facing and the sentence to be imposed in case he is convicted and I find that the bond granted is fair and reasonable in the circumstances and I see no reason to interfere with the same.”
18. It is clear that the reasoning by the trial Court on the nature of the offence and consequences if convicted certainly was in consideration of the nature of the offence. That is one of the factors a court should consider while granting bond and therefore, this Court is to consider any new information that has come up to call for revision of the bond of Kshs. 500,000/= after the above ruling.
19. There is no medical report availed by the Applicant to show that he is suffering from a chronic chest problem and more so, that he requires specialised treatment out of prison which calls for affordable bond terms to be able to pursue treatment.
20. There is nothing to show the basis upon which the Applicant arrived at a proposal for revision of bond downwards to Kshs. 100,000 with a surety of similar amount. Reference to himself as a person of meagre means and one who depends on menial jobs to provide for himself and his family seems to contradict the report availed by the Probation Officer and lacks substance.



21. The purpose of bond is however to ensure that an accused person attends Court whenever he is required to do so. Following that purpose, the Respondent proposal is for Kshs. 250,000/= with two sureties for similar amount but it does not appear to have any backing as to how it was reached. Assessment of bond is certainly not a mathematical calculation.
22. The Applicant's family indicated in the bail report that they will ensure that he attends court when the they were interviewed for bond review not the bond of Kshs. 500,000/= granted by Court.
23. It is apparent that the Applicant has been unable to raise bond terms . Further, he could as well be unwell going by his occasional absence from Court. In the circumstances, it is in the interest of justice to review the bond downwards while taking into account the nature of the offence.
24. In conclusion, the application dated 16th April 2024 is allowed in that the bond of Kshs. 500,000/= is reviewed downwards to a bond of Kshs. 300,000/= with a surety of similar amount.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF JULY, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Ibrahim Nzuri Bosire- Applicant

Ms. Cherotich for Ms Sabaya for the Applicant

Mr. Kihara for the Respondent

Ruto , Court Assistant

