



REPUBLIC OF KENYA



KENYA LAW
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**Christie aka Yawd wa Ayahud v Republic (Miscellaneous Criminal Application
E043 of 2024) [2024] KEHC 13553 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL APPLICATION E043 OF 2024
DKN MAGARE, J
OCTOBER 31, 2024**

BETWEEN

CHRISTOPHER CHRISTIE AKA YAWD WA AYAHUD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant seeks review of bond. He is facing charges on the offence of being unlawfully present in Kenya contrary to Section 53(1)(j) as read with Section 53(2) of the [Kenya Citizenship and Immigration Act](#), 2011.
2. The trial court admitted the Applicant to a bond of Kshs 1,000,000/- with one Surety on 21/9/2023.
3. Under Section 53(2) of the [Kenya Citizenship and Immigration Act](#), 2011, the punishment for the offence the Applicant was charged with is provided as follows:-

Any person convicted of an offence under this section shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

4. The issue is whether the bond terms granted by the trial court should be reviewed in favour of the Applicant. The conditions for grant or denial of bail and bond are stipulated in the [Constitution](#). Article 49(1)(h) of the [Constitution](#) of Kenya provides;

An arrested person has the right –

- (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.



5. It worth remembering that an accused person can be admitted to bail or bond. Section 123(3) of the [Criminal Procedure Code](#) provides that:

The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.

6. This court is enjoined in making a decision on bail and bond, to have regard to all the relevant circumstances as set out succinctly in Section 123A of the [Criminal Procedure Code](#), as thus:

(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 circumstances and in particular—

- (a) the nature or seriousness of the offence;
- (b) the character, antecedents, associations and community ties of the accused person;
- (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
- (d) the strength of the evidence of his having committed the offence;

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person -

- (a) 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;

7. The starting point to a reasonable bail or bond has been held to be that every accused person is presumed innocent until proven guilty. In [Mohamood Chute Wote & 2 others v Republic](#) [2021] eKLR Hon. Grace Nzioka expressed herself on Article 49(1)(h) and section 123 of the [Criminal Procedure Code](#) as follows;

The key word is; “reasonable.” Thus, the question that arises is: what criteria should be used in determining what is reasonable? In my considered opinion, the starting point is the recognition of the fact that, under Article 50(2) of the [Constitution](#) of Kenya, 2010, every accused person is presumed innocent until proved guilty. The purpose of bail and bond terms is to ensure therefore that the accused attends the trial. Further, the provisions of section 123A of the [Criminal Procedure Code](#) provides the relevant circumstances to be considered, including; nature and seriousness of the offence, character of the accused, record of compliance with previous bail and bond terms and strength of the evidence to be adduced.

8. It is noteworthy that the merit of the case is not on trial in this matter. This is premised on presumption of innocence. This presumption remains throughout the case on the state and as such an accused bears no burden to show that he is likely to be acquitted or the state to prove that their case is strong. At the time of issuance of bond the court does not consider the guilt or innocence of the accused as it is unknown. The accused enters these proceedings presumed to be innocent. In the case of [R v Lifchus](#) {1997}3 SCR 320 the Supreme Court of Canada explained the standard of proof as doth:-

“The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the crown has on evidence put



before you satisfied you beyond a reasonable doubt that the accused is guilty...the term beyond a reasonable doubt has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning. A reasonable doubt is not imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence. Even if you believe the accused is guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the crown has failed to satisfy you of the guilty of the accused beyond a reasonable doubt. On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the crown is not required to do so. Such a standard of proof is impossibly high. In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilty beyond reasonable doubt.”

9. In view of the foregoing, the court cannot use bond as if the Applicant is already guilty. Bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial. At Paragraph 3.1.(d) of the [*Bail and Bond Policy Guidelines*](#) (at page 9) it is provided that:

d) “...Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.

Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account 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.”

10. In my view, justice in bail/bond applications also denotes justice to the accused person and justice to the victim of crime served if both parties, that is, the victim and the accused get justice. It is a two-way traffic. Like to the accused person, the way to the victim’s justice is through a fair hearing and fair trial where witnesses are enabled to attend court to freely testify on the truth of what they know, saw, or heard. If an accused person is likely to abscond, then the court will be doing an injustice to the victim of the offence if it releases him on bond only for him to make the trial impossible and so is the case if the Accused person is likely to interfere with the witnesses or his release is his own safety risk due to public hostility.

11. This court is entitled to consider and include payment of a deposit or the posting of a guarantee for compliance within the conditions for bail in cases involving foreigners and permanent residents. This deposit or guarantee is covered under Section 49(7) of the [*Kenya Citizenship and Immigration Act*](#) as follows:

The court ordering release of a permanent resident or a foreign national in (d) above may impose any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.



12. In considering the circumstances of the application, I have noted that the Applicant did not abscond in the cases that he was charged with and released on bond or cash bail. It is noteworthy that he was acquitted in 2 of the cases and discharged in one. I am satisfied that the Applicant is not a flight risk.
13. In respect of the issues on previous acquittals, Article 165(6) of the Constitution on supervisory jurisdiction of this Court provides thus:

For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
14. I am yet to be addressed comprehensively in this matter. It has been raised in this case and I am duty bound to handle it as the High Court. However, the parties must address me on the same before I render myself.
15. This ruling will thus be confined to bail application. I find that the sentence is 20 times the possible instant fine and twice the maximum fine payable. There was no allegation that the Applicant was a flight risk. Being a foreigner does not ipso facto denote that the Applicant will abscond.
16. The Applicant has been in the country for 9 years. He alleges to have applied for residence. I find the bond terms to be excessive for the offence charged. It should count that he has already been acquitted twice for the same offence.
17. Accordingly, I review the bond terms granted by the trial court. I substitute thereof with bond of Kshs 200,000/- with 2 Kenyan sureties. I also direct the parties to file submissions on the issue of whether the proceedings are going on despite acquittals on the same offence.

Determination

18. I therefore make the following orders: -
 - a. The application for review of bond terms is merited and is allowed.
 - b. The bond terms of Kshs 1,000,000/- with one surety is set aside and substituted with bond of Kshs 200,000/- with two Kenyan sureties.
 - c. Parties to file submissions within 14 days on the issue of previous acquittals on the same offence.
 - d. Further directions on 30/1/2025.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 31ST DAY OF OCTOBER, 2024.

Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

Pro se Applicant

Mr. Naulikha for the State together with Mr. Mwakio

Court Assistant – Jedidah

