



REPUBLIC OF KENYA



**Njeru v Republic (Criminal Case E042 of 2021)
[2024] KEHC 13212 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13212 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E042 OF 2021
RM MWONGO, J
OCTOBER 30, 2024**

BETWEEN

JEDIDAH WANJA NJERU ACCUSED

AND

REPUBLIC RESPONDENT

RULING

The application

1. The application before the court seeks orders that:
 - a. Spent.
 - b. The Court be pleased to review its ruling of 8th March, 2022 bail/bond term for the Applicant.
 - c. That the Honourable Court do issue any further orders and allow the applicant be given visitation orders of the minors under the supervision of the Sub County Children Officer Kianyaga.
 - d. That this Honourable Court be pleased to issue any further/or better orders as may meet the ends of justice.
2. The grounds upon which the application is made are that:
 1. The applicant Jedidah Wanja Njeri is the biological mother of the minors namely Wayne Njeru (8 years) and Lesly Wanjiru Magu (3years).
 2. The applicant is entitled to visitation orders under *the Constitution* and the *Children Act* 2022. She filed a suit and the ruling was delivered in Open Court on the 8th January, 2018.



3. The applicant promises not to interfere with any witnesses and continue to abide by the terms and conditions the court may grant.
4. The Applicant desires to be allowed to visit her children under Supervision of the Children officer Kianyaga on the terms and Conditions the Court may grant.
5. No prejudice shall be suffered by any witnesses or grandparents of the minors if the orders proposed are granted.
3. The applicant's supporting affidavit has the following major averments:
 - i. That I am the Applicant/Accused in this matter and pray that this Honourable Court do consider my application and review the bond terms on the grounds that I be allowed to visit my children at Kianyaga.
 - ii. That I have faithfully fulfilled the terms and conditions earlier given to me by attending the nearest police station where I stay.
 - iii. That I shall abide by the rules and the conditions to be set by this Honourable Court.
 - iv. That I will not interfere with any witnesses as earlier promised and ordered by this Honourable Court.
4. The applicant deposed a further affidavit which had averments seeking that:
 - i. The Honourable Court do review the earlier bond terms to requiring her to reside in Kirinyaga county at her mother's residence at Kiamutugu village since her cousin namely Caroline Wangari Maina travelled to Hungary end of October, 2023 for further studies. As such she is unable to stay alone in Nairobi since the cousin travelled for further studies aforesaid.
 - ii. The Honourable court do review the said bond terms that she be reporting to the nearest police station in Kianyaga instead of Kayole Police Station, Nairobi, since she has relocated from Nairobi.
 - iii. That her life is not in danger as she has resided in Kianyaga since end of October 2023, and she is also taking care of her mother who is both diabetic and hypertensive with dementia since she is the last born in the family.
 - iv. That she will not interfere with any witnesses as earlier promised and will continue to obey the existing and any further orders this Honourable Court may grant.
5. In response, the victims rely on the Probation Officer's Report dated 31st October, 2023, which concluded in paragraph 4 that the accused breached bail conditions and therefore there is nothing to review.
6. The accused's counsel argued that that she had complied with court orders until October, 2023. She was forced to relocate as her host went to Hungary for further studies. The accused apologized for relocating without the court's consent.
7. The deceased's father stated that he lived with the deceased's children. They are witnesses, and he is not ready to see the accused as he is still grieving. He is opposed to taking the children to the accused as he feels that they will not be safe. The deceased's mother stated that the accused has been a threat to the children, and has been interacting with them.



Issues for Determination

8. The only issue for determination is whether the bail terms should be reviewed.

Analysis and Determination

9. The applicant seeks that this Court review the bail/bond terms imposed in the ruling of 8th March, 2022. Further, that the Honourable Court do issue any further orders and allow the applicant be given visitation orders of the minors under the supervision of the Sub County Children Officer, Kianyaga.
10. Article 49 (h) of *the Constitution* entrenches the right of the arrested person to be released on bail pending charge or trial unless there are compelling reasons for refusing bail. The accused is constitutionally entitled to bail until and unless compelling reasons are demonstrated. The applicant is presently enjoying bail terms the basis of which has practically changed because the circumstances for the current bond terms have changed and hence the same necessarily needs to be reviewed.
11. The applicant also seeks that the bond terms be reviewed to allow her to reside in Kirinyaga County in her mother's residence at Kiamutugu village since her cousin namely Caroline Wangari Maina travelled to Hungary end of October, 2023 for further studies. She is unable to stay alone in Nairobi since her cousin travelled for further studies and the applicant is jobless.
12. In the case of Republic v Diana Suleiman Said & Another [2014] eKLR, Muriithi J. stated that:
 - “ 11. 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 as a court of justice must reserve 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.”
13. The victim's father testified that he is not ready to see the accused as he is still grieving. He is opposed to taking the children to the accused as he feels that they will not be safe.
14. In the case Republic v Josphat Maithya Manzi & another [2022] eKLR it was emphasized that the accused person's right to bail does not cease where there are changed circumstances. The court there held:
 - “ While the burden of proof with regards to changed circumstances may appear to fall on the accused as the applicant for bail review, it is really a matter that falls for consideration under the general principle that an accused person is entitled to bail unless compelling reasons exist for refusal, in which case it is for the prosecution, if it desires that an accused be held in custody during his trial, to demonstrate the existence of compelling reasons unless such reasons arise in the circumstances of the cases.
15. The Judiciary's Bail and Bond Policy Guidelines at pg.9 paragraph 3.1 (d) underpins the right to reasonable Bail and Bond terms as follows:
 - “ d) Right to Reasonable Bail and Bond Terms:



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.”

16. The Children’s Officer Report recommended that the accused be allowed to maintain contact with her children regularly, and should be under the supervision of the sub-county children officer-Kirinyaga East Sub-county.

Conclusion & Disposition

17. In keeping with the constitutional tenets applicable to bail, this court considers that the change in circumstances affords the applicant the right to amended bail terms, provided that the proposed terms are not inappropriate. In this case, no basis is shown to suggest that the changes sought are inappropriate.
18. Accordingly, the application is allowed as prayed. As such, the court reviews its ruling of 8th March 2023, as follows:
 - a. The accused is hereby permitted to reside at her mother’s house in Kiamutugu Village;
 - b. The accused is hereby required to report twice monthly on 15th and 30th of every month at Kianyaga Police Station;
 - c. The accused is hereby permitted to have visits with her children facilitated and supervised by the Children’s Officer Kianyaga and on terms to be determined by such officer.
19. Orders accordingly.

DATED AT KERUGOYA THIS 30TH DAY OF OCTOBER 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Mamba for the State

Magare for Accused

Jedidah Wanjiru Njeru - Accused Present in person

Court Assistant, Murage

