



**Mutugi v Republic (Miscellaneous Criminal Application
E096 of 2024) [2024] KEHC 13229 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E096 OF 2024**

**DR KAVEDZA, J
OCTOBER 29, 2024**

BETWEEN

DOUGLAS GEORGE MURAGURI MUTUGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, through a Notice of Motion dated 4th July 2024, seeks a review of the bond terms imposed by the subordinate court on 25th June 2024. The applicant is facing charges of obtaining money by false pretences contrary to section 313 of the *Penal Code*. The trial court granted a bond of Kshs.1,000,000 without the alternative to a cash bail in Kibera Chief Magistrate’s Court Criminal Case No. E1364 of 2024.
2. It is this decision that the applicant is challenging. He claims that the amount is unreasonable and/or excessive considering the amount that was allegedly obtained. The applicant is the sole breadwinner of his family. The complainant has already repaid the complainant and the only remaining part of the case is its withdrawal. He urged the court to grant the orders sought.
3. In granting bail, the court must also ensure that bail or bond terms must not be excessive or unreasonable and should not be far greater than what is necessary to ensure or guarantee the accused person's appearance before the court. Where this is the case, it would be tantamount to a denial of bail, a right that is enshrined in the Constitution and the Criminal Procedure Code as outlined above. This position was expounded in the case of *Taiko Kitende Muinya* [2010] eKLR.
4. The Bail and Bond Policy Guidelines on page 9 paragraph 3.1. (d) underpins the right to reasonable Bail and Bond terms. 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 consider 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. The above position has been enunciated in various decisions by the courts as in the case of *Andrew Young Otieno v Republic* (2017) eKLR.

5. In this case, the court found it fit to admit the applicant to a bond. The inference is that he has been able to raise the bond terms granted. This amounts to a changed circumstance. His continued incarceration is therefore a good ground for a review of the bond terms.
6. In the upshot, I set aside the orders of the subordinate court issued on June 25, 2024 and substitute therefore an order granting the applicant bail on the following terms:
 1. The applicant Douglas George Muraguri Mutugi is granted a cash bail of Kshs. 150,000 with one contact person.
 2. The contact person shall avail his/her passport photo and a copy of their national identity card.

It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 29TH DAY OF OCTOBER 2024

D. KAVEDZA

JUDGE

