



**Were v Republic (Miscellaneous Criminal Application E166 of 2024)
[2024] KEHC 13370 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E166 OF 2024**

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

BETWEEN

FELIX ONYANGO WERE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, through a Notice of Motion dated 8th October 2024, seeks a review of the bond terms imposed by the subordinate court on 18th September 2024. The applicant is facing charges of dealing in endangered wildlife species contrary to section 92(2) of the *Wildlife Conservation and Management Act*.
2. After taking plea, the applicant was granted a bond of one million with an alternative cash bail of Kshs. 500,000 in JKIA Criminal Case No. E060 of 2024.
3. It is this decision that the applicant is challenging. He claims that the amount is unreasonable and/or excessive considering the charges he is facing. Since the grant of bail/bond, he is still in custody and has been unable to met the terms of bail/bond imposed. A further attempt to urge the trial court to review the bail terms failed on 18th September 2024. He urged the court to grant the orders sought.
4. I have considered the application, the arguments made in support of the application, the rival arguments by the respondent and the applicable law. For consideration is whether the orders sought should be reviewed.
5. 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.



6. 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.
7. 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. The purpose of bail/ bond is to ensure the accused attends court. His continued incarceration is therefore a good ground for a review of the bond terms.
8. In the upshot, I set aside the orders of the subordinate court issued on 9th April 2024 and substitute therefore an order granting the applicant bail/bond on the following terms:
 1. The applicant Felix Onyango Were is granted a bond of Kshs. 500,000 with one surety of a similar amount.
 2. In the alternative, to 1 above, the applicant Felix Onyango Were is granted a cash bail of Kshs. 200,000 with one contact person.
 3. The contact person shall avail his/her passport photo and a copy of their national identity card to be approved by the trial court.

It is so ordered.

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

D. KAVEDZA

JUDGE

