



**Hussein v Republic (Miscellaneous Criminal Application E012 of 2023)
[2024] KEHC 14588 (KLR) (25 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14588 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E012 OF 2023**

**DR KAVEDZA, J
NOVEMBER 25, 2024**

BETWEEN

MOHAMED SALEEM MOHAMED HUSSEIN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant is jointly charged with five others for the offence of trafficking in narcotic substances contrary to section 4 (a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* no. 4 of 1994 before the Chief Magistrates Court sitting at JKIA. He applied and was were denied bail pending trial on 29th June 2023. He filed an application before this court seeking a revision of the orders of the trial court denying him bail. In a ruling delivered by this court on 22nd July 2024, this court dismissed his application.
2. By a Chamber Summons dated 22nd October 2024, the Applicant seeks a review of this Court's orders. The application is supported by an affidavit sworn by the Applicant's advocate, Dome Obura. The Applicant avers that in its ruling, this Court directed the trial to be expedited and granted liberty to apply for a review of bail should the case remain undetermined after three months. More than three months have now elapsed, and the case is yet to be concluded. Additionally, the Applicant is experiencing ill health and prays that the Court admits him to reasonable bail terms.
3. The matter was canvassed by way of written submissions. The applicant and respondent filed written submissions which have been duly considered.



4. The issue is whether the applicant has established the existence of changed circumstances to warrant the grant of bail pending trial. In *Republic vs. Francis Maina Wairimu* [2020] eKLR, Wakiaga J held that:

“In an application for review for denial of bail, the applicant is under a duty to convince the court that there had been change of circumstances from the time when he was denied bail to warrant the court reviewing its earlier orders”.

5. While the burden of proving changed circumstances may rest with the applicant, this issue must be considered based on the ruling delivered by this court on 22nd July 2024 wherein the court denied the applicant bail but directed the trial court to expedite the trial in view of the fact that the accused is quite elderly. The applicant has argued that the trial is still pending notwithstanding the orders of the court.

6. I agree with the applicant that this court directed the trial court to expedite the trial and as far as possible to be completed within 3 months. Indeed, I note that the applicant has been in pre-trial custody for more than a year.

7. In the premises, this court is obliged to grant reasonable bail terms. The application dated 22nd October 2024 is allowed in the following terms:

- i. The applicant Mohamed Saleem Mohamed Hussein is admitted to a bond of Kshs. 8,000,000 with one surety.
- ii. The security shall be a fixed asset owned by a Kenyan citizen.
- iii. The applicant shall report to the investigating officer every Friday until the conclusion of the trial.
- iv. The contact person(surety) to avail a copy of his/her National Identity Card, a passport photo and a letter from the chief confirming that he/she has known the applicant for a period of not less than five (5) years.
- v. The applicant’s landlord shall submit to confirm that the applicant has been his tenant for a period of not less than two (2) years.
- vi. The applicant shall not leave the jurisdiction of this court until the matter is heard and determined.

RULING DATED AND DELIVERED VIRTUALLY THIS 25TH DAY OF NOVEMBER 2024

D. KAVEDZA

JUDGE

In the presence of:

Dome for the Applicant

Mburugu for the Respondent

Achode Court Assistant.

