



**Ewald v Republic (Miscellaneous Application E187 of 2024)  
[2024] KEHC 16167 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16167 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS APPLICATION E187 OF 2024**

**DR KAVEDZA, J  
DECEMBER 20, 2024**

**BETWEEN**

**ULRICH KREINER EWALD ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant is charged jointly with another not before this court for two counts of offences. Count I was for the offence of trafficking in narcotic drugs contrary to section 4 (a)(ii) of the [Narcotic and Psychotropic Substances \(Control\) Act](#) No. 4 of 1994, and Count II was for the offence of conspiracy to traffic in narcotic drugs contrary to section 4B (4) as read with section 4(B)(5) of the [Narcotic and Psychotropic Substances \(Control\) Act](#) No. 4 of 1994.
2. The applicant applied and was denied bond by the trial court in a ruling delivered on 23<sup>rd</sup> September April 2024. He has filed the present notice of motion dated 15<sup>th</sup> November 2024 seeking a revision order of the trial court denying him reasonable bail/bond terms. The application is supported by an affidavit sworn by the applicant of a similar date.
3. In support of the present application, the applicant averred that there were no compelling reasons to decline his request to be released on bail/bond, and that the offense he has been charged with is bailable and thus the applicant is entitled to reasonable bail/bond as a matter of right. Additionally, he has been in custody for over two months, and he is familiar with two Kenyan nationals who are willing to be his sureties.
4. The respondent did not oppose the application.
5. The matter was canvassed by way of written submissions, which have been duly considered and there is no need to rehash them.



6. The revisional jurisdiction of this court is donated by Section 362 of the [Criminal Procedure Code](#) which provides that:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality, or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate Court.”
7. From the above provision, it is clear that the court can only revise orders or decisions of the lower court if it is satisfied that the decision, order, or finding is tainted with illegality, errors of law, or impropriety or that there was an irregularity in the proceedings that gave rise to the impugned order, finding or decision.
8. The trial court’s record shows that on 10<sup>th</sup> September 2024, the applicant took plea and denied the charges preferred against them. The trial court heard an application for bail pending trial and the trial court denied him bail. The reason for the denial of bail was that the applicant was a flight risk. The court noted that these were compelling reasons to deny him the enjoyment of the constitutional right to bail.
9. The [Constitution](#) specifically requires under Article 49 (h) that the terms of bail to be attached to an accused who is released on bail shall be reasonable. Besides the exceptions limiting the right to bail under section 123A of the [Criminal Procedure Code](#), Article 49 (h) places the burden of proof on the state to demonstrate compelling reasons.
10. Further, the courts have come up with certain principles to be taken into further consideration in determining whether or not to release the accused on bail/bond pending trial. The cases this court has considered include [Republic vs Kokonya Muhssin](#) [2013] eKLR, [Republic vs Dwight Sagaray & 4 Others](#) [2013] eKLR, [Republic vs Makoy Madhak Deer](#) [2015] eKLR and [Republic v Richard David Alden](#) [2016] eKLR.
11. The main concern raised by the state was that the applicant was a flight risk and therefore unlikely to turn up for trial. This court is guided by Article 49(1)(h) of the [Constitution](#), the [Bail/Bond Policy](#) by the Judiciary, and decided cases.
12. In the present application, the main concern of this court is whether the Applicant will attend court if he is released on bail pending trial. That fact that he is innocent until proven guilty by a court of competent jurisdiction is without doubt.
13. In cases where the accused is a foreigner, the courts have come up with certain principles to be taken into further consideration in determining whether or not to release the accused on bail/bond pending trial. The cases this court has considered include [Republic vs Kokonya Muhssin](#) [2013] eKLR, [Republic vs Dwight Sagaray & 4 Others](#) [2013] eKLR, [Republic vs Makoy Madhak Deer](#) [2015] eKLR and [Republic v Richard David Alden](#) [2016] eKLR. Being a foreigner per se is not an inhibiting consideration in determining whether or not the accused should be released on bail pending trial. Another factor is whether the accused has a fixed abode in Kenya and whether he has property or familial connections in Kenya. Another factor is the nature of the charge that the accused is facing and whether the likely sentence to be meted out may serve as an incentive or impetus for the accused to abscond from the jurisdiction of the court. Also, to be taken into consideration is the antecedent and subsequent conduct of the accused before and after being charged. The factors listed above are by no means exhaustive. Each case will depend on its facts and circumstances.
14. The fact that the applicant is a foreigner is a material factor when this court is determining whether or not he should be released on bail pending trial. The Applicant told the court that he is a Ugandan



national. However, there is record to indicate that he had familial ties and property ties in the country. Given the foregoing, the applicant is not a flight risk.

15. Having considered the provision of Section 123 of the *Criminal Procedure Code* and the provisions of the Kenya Judiciary bail and bond policy guidelines for March 2015, I do find that there was no compelling reason that justified the denial of bond.
16. The upshot of the above analysis is that the application dated 15<sup>th</sup> November 2024 is allowed in the following terms:
  - i. The applicant herein is admitted to bond of Kenya Shillings five Hundred Thousand (Kshs. 500,000) and two Kenyan sureties.
  - ii. The contact persons(sureties) to avail a copy of their National Identity Cards and a passport photo.
  - iii. The applicant shall deposit his passport before court and shall not leave the jurisdiction of this court until the matter is heard and determined.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF DECEMBER 2024**

**D. KAVEDZA**

**JUDGE**

