



**Republic v AKI (Criminal Case E008 of 2022)  
[2023] KEHC 671 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 671 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CRIMINAL CASE E008 OF 2022  
F GIKONYO, J  
JANUARY 31, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**AKI ..... MINOR**

**RULING**

- [1] On 30/5/2022, this court considered the reasons advanced by the prosecution in opposition to the bond terms and found that they are compelling reasons. This court took into account the nature of the offence and the prevalence of the same. This court also took into account that the minor had dropped out of school for two terms. He has a right to education but it could be facilitated in other ways after it is clear he is ready to go to school.
- [2] In the end this court ordered and directed that the minor be remanded at Nakuru children remand home during the trial of this case.
- [3] On December 19, 2022, Ms Bosibori sought revision of my earlier ruling denying the minor bond and stated that the compelling reason that the ground is hostile has dwindled. His parents have found a suitable place for him at Bomet as well as a school. She urged this court to release him on bond.
- [4] Ms. Torosi submitted that the IO states that the hostility cannot be outweighed. The school's name indicated to be safer is yet to be ascertained. In light thereof, she wanted to seek the views of the victim's family. She urged this court to order for pre bail report.
- [5] The Minors' father wrote a letter to this court dated 14/11/2022. He stated that he has another home in Bomet which is quite a distance from Mulot. He appealed to this court to grant the minor bond and that he will ensure the minor stays in school at Kyogong Secondary school in Bomet once the schools open. He will stay at his home in Bomet during the school holidays.



- [6] From the bail assessment report dated 20/1/2023, the following findings were made; the family of the victim is still bitter and opposed the release of the minor on bond terms, the village elder and area chief stated that there are no safety issues at the moment for they have been assured that the minor is going to be relocated to Bomet county where he will continue with his education till the matter is heard and determined.

### **Analysis and Determination**

- [7] The nature of the right to bail is such that, where circumstances which were responsible for denial of bail have changed or no longer in existence, the person should receive his liberty without delay. But such pronouncement should be made by the court.
- [8] I have been asked to grant the minor bond on reasonable conditions as circumstances which were responsible for denial of bond have changed or will be mitigated, because his father has offered to relocate his son to his home at Bomet where he also continues with his education in Kyogong Secondary School.

### **This phrase: Reasonable conditions**

- [9] Under article 49(1) (h) of *the Constitution*, a person charged is entitled to be released on bond on reasonable conditions. There is little point in attempting to ascribe any specific measure or prescription for ‘reasonable conditions’, for what is reasonable conditions in one case may not be in another case; it all depends entirely on the circumstances and facts of each case. Except, however, conditions which completely detract from the core essential and purpose of the right to bail is certainly not ‘reasonable conditions’.
- [10] It should be noted, nevertheless, that, any conditions imposed should not only secure the liberty of the person charged, but should also guarantee his attendance in the trial, and non-interference with the integrity of the trial. Guarantee of the integrity of the trial, inter alia, guarantees justice to all, and the rights of the victims of the crime; which is not the lesser.

### **Context of case**

- [11] The subject of these proceedings is a minor in conflict with the law. It is therefore a matter concerning a child about which the constitutional peremptory command is:
- ‘A child’s best interests are of paramount importance in every matter concerning the child.’ (art 53(2) of *the Constitution*).
- [12] He enjoys the right: -
- to be presumed innocent until the contrary is proved (art 50(2)(a) of *the Constitution*)
- [13] He also enjoys, inter alia, the right: -
- ...not to be detained, except as a measure of last resort, and when detained, to be held—
- (i) for the shortest appropriate period (art 53(1)(f)(i) of *the Constitution*)
- [14] He also has the right to education.
- [15] Therefore, the question is; whether his continued holding in custody is consistent with these rights?



- [16] The prosecution continues to hold the view that the minor is still a danger to society for he is likely to engage in cybercrimes through which members of society are cumulatively and sometimes individually, losing vast amounts of money. They argued that, indeed, the source of the crime the minor is facing is a quarrel which ensued over the loot fraudulently obtained from the members of the public through cybercrime of swapping sim cards. And that the members of the public are still angry and apprehensive of the minor engaging in cybercrime. The prosecution state that therefore, possibility of attack on him is high.
- [17] It is public knowledge that Mulot area has been identified as the hotbed for cybercrime. It is also alleged that the underlying reason for this offence was a quarrel that ensued after disagreements of sharing of the loot obtained through cybercrime.
- [18] However, I should also consider that the minor is a child with rights and also in need of care, protection and proper guidance.
- [19] There is no allegation that the minor is a flight-risk. The father has provided an alternative home for him in order to avoid attack by the public at Mulot, and also to enable him continue with his education. He also gives assurances of compliance by the minor of all conditions the court may attach to his release,
- [20] I am, in the circumstances of this case persuaded that his continued holding in custody is not consistent with his rights. Thus, inclined to grant the minor bond but with such conditions as are appropriate to secure the liberty of the minor but at the same time ensure his attendance in court and guarantee the integrity of the trial.
- [21] One of the conditions of release will be that the minor does not engage in cybercrime or any other crime. If he does, the bond will be cancelled. And whomever will stand him surety should be able to assist in this end.
- [22] Accordingly, I review my orders of 30/5/2022; now, the minor shall be released on bond of Kshs 500,000 with one surety of like amount, but on conditions: -
- a) That he attends court in all occasions he is so required;
  - b) That he will not engage himself in criminal activities of any kind including cybercrime;
  - c) That he will relocate to Bomet, join and continue with his education at Kyogong Secondary School; a report by the head of the school upon his reporting to school, and such other reports in each term shall be filed by the Head of the school in court;
  - d) He will not visit Mulot to avoid any harm by the members of the public;
  - e) His father shall sign a recognizance to guarantee observance by his son of these conditions; and
  - f) Any breach of any of these conditions shall lead to automatic cancellation of the bond herein.
  - g) Cash bail is not appropriate in the circumstances of this case.
  - h) The surety be approved by the Deputy Registrar.

[19] It is so ordered.



DATED, SIGNED AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS  
ONLINE APPLICATION THIS 31<sup>ST</sup> DAY OF JANUARY, 2023.

.....

**F. Gikonyo M.**

**Judge**

**In the presence of:**

**1. Ms. Bosibori for the minor offender**

**Ms. Koina for DPP**

**3. Mr. Kasaso - CA**

