



**Republic v Wanjiku (Criminal Appeal E028 of 2021)
[2023] KEHC 205 (KLR) (Crim) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 205 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E028 OF 2021
LN MUTENDE, J
JANUARY 25, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

FRANCIS MANDE WANJIKU ACCUSED

RULING

1. At the outset, Francis Mande, the accused, was denied bail. Following an application for review, he was granted bond of KSh.500,000/- with two sureties of similar sum pursuant to the orders of this court dated the 17th February,2022.
2. In the instant application the accused seeks review of the court's decision; he prays to be released on favourable and affordable cash bail /bond terms pending trial. The application is premised on grounds that the court imposed unaffordable bail terms. That the accused continues to suffer, he comes from a family of extremely modest means who have gone through agony and have not been able to raise the bond terms. That his family has only been able to raise bond with one surety.
3. The application is supported by an affidavit deposed by Felix Mokaya Omwoyo, Counsel representing the accused who depones that the bond terms were excessive and that the accused has exhausted all means but unfortunately has not been able to comply. That the family of the accused is ready and willing to comply with any reasonable conditions that the court would grant.
4. The prosecution did not file any response to the application.
5. Mr. Mokaya submitted that the purpose of bail is for the accused to be able to attend court and that it should be an amount that the accused can afford. He urged that the bail be lowered to allow one surety who had been secured to enable the accused secure his freedom to attend court while out on bond.



That the accused is only required to show change of circumstances and his effort to raise the bond/ bail terms issued by the court.

6. Ms. Ogwen, prosecution counsel, urged that the court dealt with the application for review and set new terms that were sufficient and the court's discretion should be exercised judiciously.
7. This is a matter where five (5) prosecution witnesses have testified. Only two (2) witnesses are remaining. This court earlier denied accused bond on the ground that he was likely to interfere with witnesses. Subsequently, there was change of circumstances that made the court review the order by granting him bail.
8. The earlier application for review is distinguished from the one before this court in that in the earlier application there were no bond terms while in the current application the court is called upon to reduce existing bond terms, an application that is unopposed.
9. The applicable principle in such an application is founded on Section 123 of the [Criminal Procedure Code](#) and the Bail and Bond Policy guidelines.

Section 123 provides that bail can be granted at any time of the proceedings. Subsection (2) and (3) provides that:

- (2) The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive.
 - (3) The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.
10. The Bail and Bond Policy Guidelines provide at paragraph 3.1(d) that: "Right to Reasonable Bail and Bond Terms:

Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence.

11. This court has the discretion to reduce its own bond terms to give effect to the objectives of bond, this however, depends on circumstances of each case. It is averred that the family of the accused has failed to get a second surety. In setting bail terms this court appreciated the seriousness of the offence and the presumption of innocence. The fact that the accused is still in custody despite having qualified for bail, indicate that he is unable to raise bail terms.
12. The Kenya Judiciary's Criminal Procedure Bench book of 2018 sets out this point at paragraph, 109 as:-

"Courts must ensure bail conditions are reasonable and not excessive, as this would lead to de facto imprisonment and amount to a violation of Article 49 (2). What is reasonable should be determined in light of the facts and circumstances of each case ([R. v Taiko Kitende Muinya](#) High at Nairobi Criminal Case No. 65 of 2010)."

13. The upshot of the above is that the accused may be released on bond of Ksh.500,000/- with a surety in a similar sum; and, a contact person.
14. It is so ordered.

DATED AND SIGNED AND DELIVERED BY HON. LADY JUSTICE

L. N. MUTENDE, THIS 25TH DAY OF JANUARY, 2023.



L. N. MUTENDE

JUDGE

IN THE PRSENCE OF:

Accused

Mr. Mokaya for Accused

Ms. Ogweno for the State

C/A- Mutai

