



Duale & another v Republic (Miscellaneous Criminal Application E005 of 2023) [2023] KEHC 19634 (KLR) (26 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19634 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA**

MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2023

JN ONYIEGO, J

JUNE 26, 2023

IN THE MATTER OF ARTICLE 49 (1) (H) (50) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF AN APPLICATION FOR REVISION UNDER SECTIONS 362 AND 364 OF THE CRIMINAL PROCEDURE CODE (CAP 75)

AND

IN THE MATTER OF THE CRIMINAL PROCEDURE CODE (CAP 75)

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF CRIMINAL CASE NO. E007 OF 2022 AT THE HIGH COURT OF KENYA AT GARISSA

AND

IN THE MATTER OF AN APPLICATION BY ABDULLAHI HASSAN DUALE AND RASHID IBRAHIM ABDI FOR REVISION FROM REFUSAL OF BAIL AND/OR BOND

BETWEEN

ABDULLAHI HASSAN DUALE 1ST ACCUSED

RASHID IBRAHIM ABDI 2ND ACCUSED

AND

REPUBLIC RESPONDENT



RULING

1. The applicants herein, are jointly charged with the offence of murder contrary to Section 203 as read out with Section 204 of the *Penal code*. Particulars are that on the 1st of February, 2022 at Bulla Township Area in Garissa Sub – County within Garissa County jointly with others not before court unlawfully murdered Yarrow Ibrahim.
2. Having entered a plea of not guilty, the matter was fixed for trial. An application for bond was denied by the Honourable Court vide its ruling dated 19th May,2022 on grounds that there were compellable reasons not to grant bond. The court went further to state that from the Pre-bail report, the accused were not suitable to be granted bail as they were a flight risk and that their security was at risk if released on bond.
3. Determined to be released on bail, the applicants filed this Miscellaneous Application vide a notice of motion dated 28th March,2023 seeking review of the said ruling. The application is anchored on grounds that; the applicants have been in custody since 11th day of July, 2022 and that the offence is bailable; that circumstances have since changed as the applicants are facing serious financial crisis; that they are the sole breadwinners to their families; there has been peace and tranquility since the alleged offence took place hence the issue of their security has been overtaken by events.
4. The application is further supported by the affidavits of Rashid Ibrahim Abdi (2nd Applicant) sworn on the 28th March, 2023 stating that; he is innocent until proven guilty; he is not a flight risk and that he has not interfered with witnesses. He further averred that since his arrest, circumstances have since changed. In support of that contention, he referred the court to the Case of *Republic v Nottingham Justices Ex-Parte Davies* (1981) QB and *Republic v Diana Suleiman Said & Another* (2014) eKLR, where both courts allowed review of bail terms on account of change of circumstances.
5. The application was further supported by the affidavit of Zeinab Hassan Abdi wife to the second applicant sworn the same day thus reiterating the grounds in support of the application. She further averred that; she has nine (9) children; her husband is the sole breadwinner; she will ensure his attendance in court and that he is not a flight risk.
6. Equally, Deka Dahir Hussein wife to the 1st applicant swore an affidavit the same day also adopting the averments in her husband's affidavit in support of the application. She averred that her husband was the sole breadwinner and that circumstances have since changed.
7. Further, Dahir Magan Abdi, Hajir Mohamed Dahiye and Abdi Ali Nuriye residents of Garissa swore separate affidavits purporting to confirm that the applicants are not a flight risk and that there is peace and calmness since the alleged murder took place.
8. In response, Mr. Kihara opposed the application by filing grounds of opposition dated 30th March, 2023 on grounds that the application amounts to abuse of the court process as similar applications have been dealt with twice and dismissed. That the situation has not changed and no compellable reasons have been given to warrant review.
9. I have considered the application herein, supporting affidavits and the response thereof. The application is seeking review of the ruling made on 19th May,2022, on grounds that; circumstances have since changed; that the applicants were not a flight risk and that, they were sole breadwinners to their families.



10. In its ruling, the court did address those grounds. The same was again canvassed vide application dated 14th June, 2022 which again was dismissed. It is trite law that for a court to review its orders in a Criminal case, the applicant must demonstrate change of circumstances.
11. In this case, I do not find material change in circumstances. How has the issue of being a flight risk changed? Perhaps the issue of their security may have changed but the critical ground of being a flight risk still remains.
12. As to being breadwinners, the same was there even during the delivery of the previous two rulings. In my view, the applicants are trying their luck before me. The application is purely an abuse of the court process. If the applicants were dissatisfied with the two rulings, they should have appealed.
13. In a nutshell, it is my finding that the application is devoid of merit hence dismissed. Accused to remain in custody until the matter is heard and determined.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 26TH DAY OF JUNE, 2023

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J. N. ONYIEGO

JUDGE

