



**Munguti v Republic (Miscellaneous Criminal Application
E286 of 2023) [2023] KEHC 21013 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CRIMINAL APPLICATION E286 OF 2023**

DR KAVEDZA, J

JULY 28, 2023

BETWEEN

RICHARD MBUVI MUNGUTI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for revision of the ruling delivered by Hon. G. Muuo (SPM) delivered on 3rd July 2023 at Makadara Chief Magistrate's Court criminal case no. E4023 of 2023)

RULING

1. The applicant is charged before the subordinate court with the offence of damaging energy installations and infrastructure contrary to section 168 (1) (c) of the *Energy Act*, No 1 of 2019. Before the trial court, he applied and was admitted to a bond of Kshs 1 million with a surety of a similar amount.
2. He filed the present application dated July 25, 2023 seeking revision of the bond terms. He prayed that this court substitute the bond terms granted with a cash bail of Kshs 50,000. The application is premised on the grounds on the face thereof and supported by an affidavit sworn by Eric Muchiri, the applicant's advocate. The averments made are that the applicant was arrested on June 26, 2023, and released on a police bail of Kshs 20,000 pending investigations. That during the said investigations, he reported to the police station as and when required. On June 29, 2023, he was arraigned before the court sitting in Makadara and charged accordingly. He was admitted to a bond of Kshs 1 million with a surety of a similar amount. He filed an application before the trial court seeking a review of the bond terms but the court rejected the same.
3. He is a truck driver employed by DHL Exel Supply Chain Kenya Limited earning a salary of Kshs 42,000 per month. He has been unable to raise the bond terms granted and is incarcerated at Industrial Area prison. His employer is willing to post bond on his behalf. He is the sole breadwinner in his family of four children. He can only raise Ksh. 50,000 as cash bail which he sought to be granted.



Analysis and determination.

4. The constitution specifically requires under Article 49 (h) of the Constitution 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) of the *Constitution* places the burden of proof on the state to demonstrate compelling reasons.
5. The *Judiciary Bail and Bond Policy Guidelines of 2015* have provided parameters to assist the court in exercising discretion judiciously. With respect to bail and bond, they require that the court in granting bail should consider the seriousness of the offence, the strength of the case, interference of witnesses, failure of the accused to attend, or where the accused is charged with another case, the need to protect the victim(s), the security and safety of the accused, the likelihood of absconding from the jurisdiction of the court and other factors which must be weighed by the court in the interest of justice. Such an exercise of discretion requires a wholistic approach and the court must, in close circumspection, take to account the circumstances of the case and the accused person individually.
6. In granting bail, the court must also ensure that bail or bond terms must not be excessive or unreasonable and should not be far greater than what is necessary to ensure or guarantee the accused person's appearance before the court. Where this is the case, it would be tantamount to a denial of bail, a right that is enshrined in the Constitution and the Criminal Procedure Code as outlined above. This position was expounded in the case of Taiko Kitende Muinya [2010] e-KLR.
7. The *Bail and Bond Policy Guidelines* on page 9 paragraph 3.1. (d) underpins the right to reasonable Bail and Bond terms. Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be proportionate to the offence committed taking into account the personal circumstances of the accused person. What is reasonable therefore will be determined by reference to the facts and circumstances prevailing in each case. The above position has been enunciated in various decisions by the courts as in the case of *Andrew Young Otieno v Republic* (2017) eKLR.
8. The court must however ensure that the bail or bond terms must not be so low an amount that would make it easy for the accused to be tempted to forfeit the same and abscond court. As indicated above, whatever bond the court in its discretion grants, should be commensurate to the offence committed. In the present case, the accused was charged with offence of damaging energy installations and infrastructure contrary to section 168 (1) (c) of the *Energy Act*, No 1 of 2019. The value of the subject matter of the property destroyed is Kshs 673,000 (Kenya Shillings six hundred and seventy-three thousand only)
9. However, the trial court admitted the applicant to a bond of Kshs 1,000,000 with a surety of a similar amount which in my view, is excessive hence contravenes the bail and bond policy guidelines. The fact that the accused person is still in custody despite being granted bail demonstrates that the conditions were excessive and he is unable to meet them.
10. In the upshot, I set aside the orders of the trial court issued on July 3, 2023 and substitute thereof with an order granting the accused person the following bond terms: -
 - i. The 1st accused person is granted a bond of Kshs 500,000 with a surety of a similar amount. In the alternative, he is granted a cash bail of Kshs 300,000.
 - ii He is required to deposit his passport in court and his surety to provide his/her photograph together with a copy of their national identity card.



iii. The accused person shall not travel out of the country without the consent of the court.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF JULY 2023

D. KAVEDZA

JUDGE

In the presence of:

Ms. Chege for the State

Joy C/A

