



**Karuri v Republic (Miscellaneous Criminal Case 4 of 2023)
[2023] KEHC 21517 (KLR) (17 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL CASE 4 OF 2023
FN MUCHEMI, J
AUGUST 17, 2023**

BETWEEN

BONIFACE WAWERU KARURI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This application dated June 9, 2023 that seeks for release of the applicant on bail at affordable terms. The wording of the application is such that it is brought under Article 49(1) of the Constitution. It is deposed by the applicant’s counsel that an order was made by Hon Macharia SPM in January 2023 that the applicant will be released on bail after the victim has testified. It is further stated that the said order has caused suffering to the Applicant who remains in custody to date. The situation was made worse by the transfer of the trial magistrate to another station. The matter has been mentioned before another magistrate pending fixing of a hearing date before the succeeding magistrate.
2. The respondent in its replying affidavit opposes the application on grounds that the trial court did not deny the applicant bail but only suspended it pending taking of the evidence of the victim. During the mention before Hon Imolet, the court directed that a pre-bail report be filed and that an advocate for the accused be appointed on probono bases. The position in the lower court file Criminal case No E053 of 2023 is that a bail application dated April 18, 2023 is pending hearing even as the applicant filed this application. The respondent argues that this application is premature and should wait for the trial court to take evidence of the victim so as to address the issue of bond. The respondent states that this application lacks merit and is misplaced.
3. The applicant filed submissions arguing that this case has delayed since the directions of the court that the victim testifies first before bail could be considered was made seven months ago. The applicant further argues that the ruling of the magistrate denying him bail until the evidence of the victim is taken, is 'plainly wrong and misdirected' and that this court ought to intervene.



4. In determining this application, it is noted that it is brought under Article 49(1) of the *Constitution*, the applicant is addressing this court on issues of bond as set out in the said article as if this court is the trial court. It is the trial court that is possessed of the jurisdiction to grant or refuse bail in the first instance under Article 49. Once the trial court has made its decision and an accused person is dissatisfied, he ought to appeal to this court.
5. The applicant says the trial court was 'plainly wrong' in its directions and asks this court to intervene. These sentiments are expressed in the submissions but not in the application.
6. It is clear that the applicant has not applied for review under section 362 and 364 of the *Criminal Procedure Code*. The supporting affidavit contains grounds in support of an application for bail in the first instance but has not raised a single ground relating to revision of the orders of the trial court.
7. The trial magistrate in the proceedings explains that he was guided by the pre-bail report to give the direction complained of in this application. The basis was the fact that the victim feared for her life if the applicant was to be released on bail. In my view the bail application dated April 18, 2023 pending before the trial court ought to be heard and a ruling given which may form subject of an appeal in the event that bail is refused.
8. It is my considered view that this application ought to have been argued before the trial court and not the High court. I find that the same is incompetent and hereby struck out.
9. It is hereby ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 17TH DAY OF AUGUST, 2023.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 17th day of August 2023

