



**Republic v Guyo (Criminal Case E059 of 2023)  
[2023] KEHC 24682 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24682 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E059 OF 2023  
EM MURIITHI, J  
OCTOBER 31, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ABDI AZIZI GUYO ..... ACCUSED**

**RULING**

1. Before the court is an application for review of bail terms dated 26/9/2023 by the accused seeking specific reliefs as follows:
  - “ 1. That this application be certified urgent.
  2. That this honorable court be and is hereby pleased to set aside and review the bail/bond terms for the accused herein granted on 14.09.2023 and do grant the applicant minimum bond/bail terms.”
2. It is based on grounds set out in the application, as below, and supported by an affidavit thereon as follows:
  - “ a. The applicant is the accused herein.
  - b. That the accused is charged with murder contract Section 203 as read with Section 204 of the *penal code*.
  - c. The accused sought bond terms on 14.09.2023 which bond was granted albeit inordinately high in the circumstances making it difficult for the applicant to raise the same.



- d. The applicant was bond terms to the extent that Kshs.1 Million bond with one surety or in the alternative a cash bail ofKshs.500,000 which terms are inordinately high.
- e. The applicant is unable to raise the terms.
- f. The applicant is a person with mental disability a matter on court's record.
- g. The applicant is a son of a widow who is jobless and takes care of the applicant by taking him to medical facilities.
- h. The applicant has had uncountable epileptic episodes in the custody and is in need of urgent medical attention.
- i. Though the court ordered the applicant be taken to hospital, the applicant was informed there is no medicine available for him.
- j. That the bond set is excessive and enforcing the same will amount to miscarriage of justice because the applicant and his jobless mother are persons of no economic means.
- k. That the accused is mentally disabled as ascertained since the year 2015 and as such cannot raise the said bond.
- l. That the accused person is likely to suffer extensive health damage and mental deterioration if he continues to languish in prison for reasons he cannot afford the inordinately set bond terms.
- m. The applicant prays that he be granted a personal bond which should not exceed Kshs.100,000 either cash bail or bond.”

3. In granting Bail to the accused upon plea on 14/9/2023, the Court (Gitari, J.) said:

“Order:

I have considered the application for bail. I note that the Prosecution has not placed any compelling reasons for refusal to grant bail. I have looked at the medical report and noted that the accused has a condition which requires treatment. There being no compelling reasons, I order as follows:

1. The accused shall be released on a bond of Ksh.1,000,000/- plus one surety to be approved by the Deputy Registrar.
2. In the alternative, he be released on a cash bail of Ksh.500,000/-.
3. The Counsel for the accused to be supplied with the committal bundles within (7) days.
4. The Matter to be mentioned before the Presiding Judge on 9/10/23 for pre-trials. If bond is not signed the accused be escorted to hospital for treatment.

4. The DPP opposed the application and filed grounds of opposition dated 13/10/2023 as follows:

“Grounds Of Opposition



1. The applicant has not demonstrated changed circumstances to warrant a review of bail or bond terms.
  2. The court 'in granting bail and bond terms did not take into consideration extraneous matters to the detriment of the accused.
  3. That there exists sufficient medical facilities within Meru GK remand prison facility and Meru level 5 hospital which can manage the accused medical condition.
  4. That the accused has not presented a medical report that while being in custody to the effect that his epileptic episodes are endangering his life.
  5. This court has not been informed either through a report from prison or any other means that indeed the accused's life is in danger while in custody.
  6. The application lacks merit and pray that it be dismissed accordingly.”
5. On request by the Prosecution, the Prisons Department gave a non-committal letter dated 16/10/2023 on any medical need for release of the accused as follows:

“Office of The Director of Public Prosecutions,

Ntara Place Building,2nd Floor

Library/st Pauls Road

Box 233-60200

Meru Atn: Masila E. Masila (principal Prosecution Counsel)

Re: Criminalcase No E059 of 2023- Murder,

Republic vs Abdi Aziz Guyo.

Reference is made to your office letter ref: DPP/MRU/HCRC/E059/2023 dated 13<sup>th</sup> October 2023 in respect of the above concerning review of bond terms.

The accused was admitted here on 21.08.2023.

1. The accused has been managed well in regard to his health status since admission to the institution and provided with drugs to manage his neurological disorder (epilepsy).
2. The only medical reports held here attached for your perusal and further necessary action.
3. The institution is capable to attend to the accused's medical condition and needs and has other inmates with similar and even complex conditions. However, we would be relieved if his case was considered favorably.

Gichane (SP)

For: Officer In-charge,

Meru Main Prison.

6. Counsel then made oral submissions in support of their respective contentions set out in their pleadings. With respect, the DPP and the Prison authorities proceed on the matter as if they were trying



to justify denial of bail for the accused indicating that the prison facilities are able to attend to medical conditions similar and more complex to that of the accused herein. That is not the point.

7. The accused herein has already been granted bail upon a finding that the Prosecution did not place any compelling reasons before the court. To refuse to review bail on the ground that the Prison authority has facility to attend to the accused's ailment is to refuse bail when the court has previously found no compelling reason for denial of bail.
8. In the respectful view of this court, while not hearing an appeal from the terms of the order on bail by the Court of equal jurisdiction, the court has jurisdiction and discretion, in the same manner as when previously constituted, to consider an application for review on the grounds of the accused's inability to meet the conditions of bail. The court does not sit on appeal and find that the terms of bail are excessive, as urged by the counsel for the accused, but on review whether, by reason of the bail terms and the circumstances of the accused, the intention of the court that the accused be released on bail cannot be effected because he cannot meet the terms.
9. A court does not grant bail terms so that the accused may not be able to meet them, as that would amount to a refusal of bail. The court intended that the accused should be released on bail there being no compelling reasons to deny him bail. If there is evidence, as here, that the accused is not able to meet the bail terms, there is justification for review of the bail terms. It is immaterial whether the accused suffers an ailment that the Prison authorities are quite able to treat.
10. To the end that the Court's order for the release on bail of the accused is realised, the Court will revise the terms of bail to a bond of Ksh.200,000/- with one (1) surety of the same amount. The Court does not make any provision for Cash bail.

Order accordingly,

**DATED AND DELIVERED THIS 31ST DAY OF OCTOBER, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

**Mr. Thangicia for the Accused.**

**Mr. Masila for the DPP.**

