



**Ayisi v Republic (Miscellaneous Criminal Application E053 of 2023)
[2023] KEHC 27337 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 27337 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
MISCELLANEOUS CRIMINAL APPLICATION E053 OF 2023
SN MUTUKU, J
OCTOBER 26, 2023**

BETWEEN

EUGENE LIKABU AYISI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Background

1. The applicant, Eugene Likabu Ayisi, is the accused in the following matters, all filed at Ngong Law Courts:
 - i. Ngong Criminal Case No E1139 of 2023 in which he faces a charge of stealing a mobile phone belonging to Spacious Romanah contrary to section 268 (1) as read with section 275- of the *Penal Code* and an alternative charge of handling stolen goods contrary to section 322 (2) of the *Penal Code*. The offence is alleged to have been committed on September 3, 2023.
 - ii. Ngong Criminal Case No E1141 of 2023 in which 2 counts of robbery with violence contrary to section 296(2) of the *Penal Code*. The victims are Doreen Kendi and Richard Simpiri Kashi. The date of the alleged offence is March 12, 2023.
 - iii. Ngong Criminal Case No E1142 of 2023 in which 2 counts of robbery with violence contrary to section 296(2) of the *Penal Code*. It is alleged that he robbed Cynthia Bwari and Sophie Mwafaida their phones on 12th February 2023.
 - iv. Ngong Criminal Case No E1152 of 2023 in which he faces 4 counts of robbery with violence contrary to section 296 (2) of the *Penal Code*. These offences are alleged to have been committed on January 29, 2023 and the victims are Fidelis Wambui, Stephen Ngari Mwangi, Robert Mureki and Johnson Muturi.



- v. Ngong Criminal Case No E1182 of 2023 in which he faces 2 counts of robbery with violence contrary to section 296 (2) of the [Penal Code](#). The offences are alleged to have been committed on August 1, 2023 and the victims are Joseph Kinyanjui Murungi and Joseph Gitau Wairimu.
2. I have noted that the items, subject of the robbery, are mobile phones.
3. The plea in respect of each file was taken on different dates. The applicant denied the offence in all the five files. The issue of bond was raised in all the files. In criminal case number E1182 of 2023, the court has not pronounced itself on the issue of bond. In all the other cases, bond/bail was denied through a ruling delivered on September 19, 2023.

Notice of Motion

4. By a Notice of Motion dated September 29, 2023, the applicant has, through his counsel, moved this court seeking the following orders:
 - i. That the honourable court be pleased to certify this application as extremely urgent and heard *ex-parte* in the first instance.
 - ii. That pending the hearing and determination of this application this honourable court be pleased to order that all the matters in which the applicant is charged before the Chief Magistrates Court Ngong to wit but not limited to MCCR E1139, E1141, E1152 and E1182 of 2023 be given the same consolidated and favourable bail and bond terms with similar surety in one file which would then apply across all the other files.
 - iii. That at the hearing and determination of this application this honourable court be pleased to order that all the matters in which the applicant is charged before the Chief Magistrates Court Ngong to wit but not limited to MCCR E1139, E1141, E1142, E1152 and E1182 of 2023 be given the same consolidated and favourable bail and bond terms with similar surety in one file which would then apply across all the other files.
 - iv. That this honourable court be pleased to vary/review and revise the orders of the lower court on bail and bond terms for the applicant made on September 19, 2023 and any other orders thereto ad be pleased to grant the applicant/accused person favourable and or reasonable bail and bond terms.
 - v. That at the haring and determination of this application this honourable court be pleases to order that all the unlawfully procured evidence so procured and solicited by the respondent herein against the applicant herein after his arrest thereafter be so ordered to be inadmissible and not to be so used during trial against the accused person herein without the prior independent investigation and audit by DCI headquarters Kiambu Road and investigation report by IPOA be so produced on the same.
 - vi. That this honourable court be so pleased to issue and or stay of proceedings in the Chief Magistrate Court Ngong Criminal cases against the applicant herein to wit but not limited to MCCR E1139, E1141, E1142, E1152 and E1182 of 2023 *Republic v Eugene Likabu Ayisi*.
 - vii. That the honourable court be pleased to issue an order that the criminal charges facing the accused herein be so consolidated on one charge sheet and or all the said charges be heard by one trial court and or at a different and neutral court station within Kajiado County.



- viii. That the court does make an order that the property seized from the accused person herein to wit his two mobile phones, military ID card, work uniforms and bag be returned to the accused person.
- ix. That costs of this application be provided for.
5. The grounds in support of the application are found on the face of it and in the supporting affidavit sworn by the applicant on September 29, 2023.
6. The application, brought under Certificate of Urgency was placed before this court on October 5, 2023. I directed that the application be served and the parties appear before the court on October 12, 2023 for directions. On October 12, 2023, Ms Nyaroita, counsel for the respondent informed the court that she was not opposed to prayer numbers 3 and 4 of the Notice of Motion.
7. This court did not make a pronouncement on the matter but instead called for the records from the lower court in respect of all the criminal matters subject of this application. The matter was mentioned on October 24, 2023 when it was confirmed that all the lower court files had been availed to the High Court in Kajiado.
8. Ms Nyaroita reiterated that the respondent is not opposed to granting of prayer number 4 of the application and sought time to file response to the application. I reserved ruling on the matter until October 26, 2023.

Determination

9. Prayers 3 and 4 of the application are reproduced here for emphasis. They are that:
 - iii. That at the hearing and determination of this application this honourable court be pleased to order that all the matters in which the applicant is charged before the Chief Magistrates Court Ngong to wit but not limited to MCCR E1139, E1141, E1142, E1152 and E1182 of 2023 be given the same consolidated and favourable bail and bond terms with similar surety in one file which would then apply across all the other files.
 - iv. That this honourable court be pleased to vary/review and revise the orders of the lower court on bail and bond terms for the applicant made on September 19, 2023 and any other orders thereto ad be pleased to grant the Applicant/accused person favourable and or reasonable bail and bond terms.
10. In short, the applicant is asking this court to have all the files consolidated in respect to bond terms and to have one surety in all the criminal matters facing him at Ngong as well as review/vary or revise bond terms.
11. Bond was denied by the lower court. I therefore understand the Applicant to be saying that this court should admit the applicant to bond. It is not lost to me that bond/bail was not determined in case number E1182 of 2023.
12. I have considered this matter. Despite the respondent not being opposed to review of bond terms, I note that there is more to this application than the issue of admission to bond. I have noted that the respondent, represented by a different officer in the lower court, opposed admission of the Applicant to bond. The trial court considered the matter and reasoned through the ruling delivered on September 19, 2023 declined to grant bond.
13. To my mind, it would be better to have the entire application argued fully before I can make my determination on the issues raised in it. To avoid prejudicing any party, I decline to grant either Prayer



3 or 4 of the application at this stage. I will allow parties to fully canvass all the issues raised in the application before I can deliver a comprehensive ruling on the matter.

14. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED ON 26TH OCTOBER 2023.

S. N. MUTUKU

JUDGE

