



**Ngatia v Republic (Miscellaneous Criminal Application 2 of 2023)  
[2023] KEHC 25793 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25793 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION 2 OF 2023  
DR KAVEDZA, J  
NOVEMBER 29, 2023**

**BETWEEN**

**GODFREY NJOROGE NGATIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant is the complainant at Kibera Chief Magistrate’s Court Criminal Case no. 1375 of 2020 Republic vs Benson Muiruri Mucheru and Joseph Zacharia Iyadi. He has filed the present application dated 17<sup>th</sup> July 2023, seeking the transfer of the case to Chief Magistrate’s Court at Milimani. He also sought the reinstatement of the initial bond terms of Kshs. 600,000 granted to the accused persons.
2. The application is supported by an affidavit where it is contended that the trial court reviewed the bond terms downwards without any justification. That the complainant’s advocate was denied an opportunity to address and assist the court in determination of the dispute. He urged the court to grant the orders sought.
3. Upon an application by a party or a court on its own motion may order the transfer of a case to any court of any competent subordinate court or the high court itself in accordance with Section 81 of the *Criminal Procedure Code*. The question for determination is whether the applicant or complainant has met the threshold under section 81 of the *CPC*. The applicant’s grievance is that the accused persons were released on lenient bond terms that are not commensurate to the offence in total disregard of the bail/bond policy guidelines.
4. It is for this reason that he would like the case to be transferred to another Milimani Chief Magistrate’s court. I have perused the lower court’s proceedings. The trial court revised the bond terms due to prevailing circumstances at the time being the outbreak of the Covid-19 pandemic. I dare say, this is not the only court in the country that exercised discretion suo moto. The high court did the same and



this discretion was exercised by all the courts across the country in a bid to ease decongestion in remand prisons.

5. I have failed to see any bad faith on the part of the magistrate that would necessitate the transfer of the case. Counsel has not demonstrated that the applicant (complainant) will not get a fair and impartial trial. Further, the applicant has failed to demonstrate any actual or perceived bias on the part of the magistrate under the provisions of Section 81 (1) (a) of the *Criminal Procedure Code*.
6. Importantly, the applicant has not demonstrated what prejudice he has suffered or is likely to suffer because the trial is being conducted while the accused persons are out on bond/bail.
7. The application dated 17<sup>th</sup> July 2023, was made against the ‘Republic’. Who is the Republic? The Director of Public Prosecutions (D.P.P) who ought to have filed the application as the person vested with prosecutorial powers under Article 157 has opposed the application on the ground that six (6) witnesses have already testified. It is also worth noting that the magistrate was not enjoined as a respondent in the application as required under the law. Consequently, the applicant cannot purport to usurp the powers vested in the D.P.P to prosecute criminal cases under the guise that a victim has a right to be heard.
8. The Supreme Court in *Lendrix Waswa vs Republic* [2020] eKLR provided guidelines on the conduct of victims during criminal proceedings and to my knowledge, prosecution of applications, independent of the D.P.P is not one of them.
9. In any event, a court of law cannot arbitrarily deny an accused person bail/bond unless there are compelling reasons. In this case, there were no compelling reasons adduced before the court, that is why in the first instance the accused persons were granted bail/bond.
10. The bail and bond policy guidelines provide considerations for grant or denial of bail/bond by the court. The omnibus consideration is whether an accused person would attend court when required. (See, *Republic vs Danson Mugunya and another* [2010] eKLR ).
11. The record clearly shows that the accused persons have been attending court without fail. I further note that the application was filed after the fifth witness had testified and so far, six (6) witnesses have testified.
12. It is my considered view that it will not be in the interest of justice at this juncture to transfer this case to Milimani or any other court for that matter, just because the accused persons were released on bond/bail terms which in the applicant’s opinion are lenient.
13. Consequently, the application dated 17<sup>th</sup> July 2023 is dismissed for lack of merit.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 29<sup>TH</sup> DAY OF NOVEMBER 2023**

**D. KAVEDZA**

**JUDGE**

**In the presence of:**

Mr. Mulama h/b for Mutuma for the state

Mr. Muchiri for the applicant

Naomi/Nelson C/A

