



**Republic v Hussein & another (Criminal Case E006 of 2023)  
[2023] KEHC 25908 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25908 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CRIMINAL CASE E006 OF 2023  
AK NDUNG’U, J  
NOVEMBER 23, 2023  
RULING ON BAIL REVIEW**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ASHA NASIBO HUSSEIN ..... 1<sup>ST</sup> ACCUSED**

**SARAH AMINA HUSSEIN ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. Asha Nasibo Hussein, the 1<sup>st</sup> Accused applied by way of a Notice of Motion dated 26/10/2023 for review of bond terms granted vide this Court’s Ruling dated 27/07/2023. By the said ruling, this court ordered the Accused Persons to be released on bond of Kshs.300,000/- with two sureties of a like sum. From the record, it appears that the 2<sup>nd</sup> Accused was able to raise the two sureties as ordered by the court. The 1<sup>st</sup> Accused in her application stated that she can only afford a bond of Kshs.200,000/- with one surety.
2. It was submitted that she is a mother of three children aged between 5-10 years and she has an elderly mother who is 72 years old under whose care the children are. That she was the sole breadwinner therefore her children and her mother are left destitute. It was submitted that the bond terms set were unattainable for her and this has curtailed her constitutional rights to liberty and presumption of innocence until proven guilty. That she has been in custody since May, 2023. Counsel urged this court to review the bond terms downward since this court has the inherent power and discretion so to do.
3. The application was opposed. Learned counsel in her oral submission argued that the 1<sup>st</sup> Accused was obligated to show to the court that there are changes in circumstances. She relied on the previous affidavit dated 30/05/2023 to oppose the application.



4. The fundamental purpose of bail is to ensure the Accused attends trial. Even in an application for review, the court must put this issue into consideration. The jurisprudence is that in cases where a party seeks review of bond terms, that party has to show that there are changes in the circumstances which would lead the court to review the bond terms. Useful guidance is available in case law. In the case of *Republic v Francis Maina Wairimu* (2020) eKLR the court had this to say.

“In an application for review of the denial of bail the applicant is under a duty to convince the court that there had been change of circumstances from the time when he was denied bail to warrant the court reviewing its earlier orders.”

5. Similarly, in the case of *Republic vs Diana Suleiman Said & another* (2014) eKLR it was held as follows:-

“The changed circumstances test is one of a common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused”

6. Wakiaga J in *Republic v Joseph Kuria Irungu alias Jowie & another* [2019] eKLR while addressing the issue stated; -

“The Applicant bears the burden on review to show on a balance of probability why the earlier order should be vacated and why it should be unjust not to vacate the order. He must show that the circumstances of the case are so altered that compelling reasons are disclosed for review of the earlier order. This position was clearly stated by Justice Muriithi in his well argued decision in *Republic v Diana Suleiman Said & another* [2014] eKLR:-

“I find nothing in the provisions of Article 49(1)(h) of the Constitution or Section 123 of the Criminal Procedure Code to suggest that the court once grant or refuse bail becomes functus officio or that the issue of bail becomes res judicata upon decision to grant or refuse bail. Article 49(h) entrenches the right of the arrested person to be released on bail pending charge or trial unless there are compelling reasons for refusing bail. The accused is constitutionally entitled to bail until and unless compelling reasons are demonstrated. If compelling reasons are arise or are demonstrated after the arrested person has been released or granted bail but not yet released, as in this case, the court may properly review the matter on the basis of the compelling reasons shown. Section 123 of the CPC [as amended by the Constitution of Kenya 2010 to permit bail for all criminal cases] makes bail available at all times - where any arrested person is presented at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail.”

This position has been captured by the Judiciary in the Bail/Bond Policy Guidelines 4.2 6 (h) in which the court is required to consider the following additional features in deciding whether to grant an accused person bail:-



- a) The period the accused person has already spent in custody since arrest.
- b) The probable period of detention until the conclusion of the trial if the accused is not released on bail.
- c) The reason or reasons for any delay in the conclusion of the trial and any role of the accused with regard to such delay.
- d) Change of circumstances during the trial.
- e) The maximum custodial sentence in case the accused person is convicted. See the case of [\*Republic v. Raphael Muoki KilungI\*](#) [2020] eKLR.

7. In the instant case, no change of circumstances has been pleaded. What is pleaded is the inability to raise the bond set by the court. There being no evidence of change of circumstances, the applicant falls short of the threshold required for the review sought. The application has no merit and is dismissed.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 23<sup>RD</sup> DAY OF NOVEMBER 2023**

**A.K. NDUNG’U**

**JUDGE**

