



REPUBLIC OF KENYA



**KENYA LAW**  
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**Simiyu v Republic (Criminal Case E038 of 2021)  
[2022] KEHC 11613 (KLR) (Crim) (23 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11613 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE E038 OF 2021**

**JM BWONWONG'A, J**

**MAY 23, 2022**

**BETWEEN**

**BOAZ WEKESA SIMIYU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The accused/applicant applied for review and/or variation of his bond/bail terms that were imposed by the court on October 13, 2021, pursuant to article 49 (1) (h) and article 50 (2) of the 2010 *Constitution of Kenya*, section 123 of the *Criminal Procedure Code* (Cap 75) Laws of Kenya and all enabling provisions of the law.
2. The accused has supported his application with seven grounds that are set out on the face of the notice of motion dated 8/3/2022, with the major grounds being the following. The accused was granted bond/bail in the sum of shs 400,000/- with one surety and in the alternative he was granted cash bail of shs 300,000/- pending the hearing and determination of his trial on a murder charge.
3. The accused now seeks variation of those terms to accommodate his plight and that of his family. Despite the court having granted him bond/bail on 18/05/2021 the family has not been able to meet the said terms.
4. The court has inherent powers to grant the orders sought.
5. In his supporting affidavit the accused has replicated the same matters that are set out in the notice of motion which I hereby decline to reproduce.

-The submissions of the accused.



6. Counsel for the accused has submitted that the prosecution did not oppose the release of the accused on bail, when the court imposed the foregoing terms of his release on bond/bail.
7. The family of the accused has not been able to meet the said terms of the bail set by the court; despite all efforts in search of reasonable means.
8. Furthermore, counsel has proposed that the terms be reviewed so as to admit the accused on bond/ bail cash bail of shs 100,000/- and bond of shs 200,000/-  
DIVISION - Issues
9. I have considered the unopposed application and the affidavit of the accused. I find the following to be the issues for determination.
  1. Whether the court has power to review its own orders.
  2. What are the reasonable terms upon which to release the accused on bail.

#### **Issue 1**

10. It has long been recognized from very early times that this court has always had inherent powers. See *Stanley Munga Githunguri v Republic* (1986) KLR 1 and the cases cited therein. The inherent powers are exercisable as long as they are not in conflict with any statutory law. I find that in the instant application, there is no statutory that enables this court to review its own decisions and orders. Therefore, the resort to inherent powers is proper. I therefore find that this court has jurisdiction to review its earlier terms upon which the accused was released on bond/bail.

#### **Issue 2**

11. I further find that the accused has not been able to meet the bond/bail terms he was granted by this court; since they appear to be excessive in the circumstances of the case. Consequently, I hereby review downwards those terms so as to enable the accused to meet them. Accordingly, the accused is hereby released on a bond of shs 250,000/- with a surety of a similar amount to be approved by the Deputy Registrar of this court. In the alternative to the foregoing the accused is hereby released on a cash bail of shs 100,000/-.
12. In the interim period the accused is to remain in custody until he complies with his terms of release on bond/bail.

**Ruling signed, dated and delivered in open court at Nairobi this 23<sup>rd</sup> day of May 2022.**

**J M BWONWONG'A**

**JUDGE**

In the presence of-

Mr. Kinyua court assistant

The Mr. Dachö holding brief for Mr. Farrah for the accused/applicant

Ms Maina for the Respondent

