



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Chiejina & another (Criminal Revision E059 of 2021)
[2022] KEHC 12234 (KLR) (Crim) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12234 (KLR)

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

CRIMINAL

CRIMINAL REVISION E059 OF 2021

DO OGEMBO, J

JULY 28, 2022

BETWEEN

REPUBLIC APPLICANT

AND

VICTOR CHUKWUDI CHIEJINA 1ST RESPONDENT

CYRIL UCHE AIGBOGUN 2ND RESPONDENT

RULING

1. The applicant, the Republic, have moved this court by way of notice of motion application dated 30.3.2022. The application, brought under section 362 of the *Criminal Procedure Code* (amongst other provisions), seeks an orders of revision of the orders of the Hon. Chief Magistrate, in Chief Magistrates Criminal Case No. E353 of 2022 issued on 29.3.2022 (later also on consolidation on 8.4.2022). The orders were to the effect that the applicants be released each on a bond of Kshs.500,000 with 1 surety of a similar amount or an alternative of Kshs. 300,000/= in cash bail.
2. The main grounds raised by this application is that the Honourable court placed the 2 respondents on bail whereas the state had indicated intentions to oppose release of the 2 on bail, and despite the fact that the objection of the state was never canvassed.
3. The respondents, have opposed this application and maintained that the orders aggrieved of were proper since the grant of bail is a matter of discretion of the court. And that the applicant had in fact gone ahead and served the applicants with the affidavits of the investigating officer in opposing bail. It was urged that this application be dismissed.



4. I have considered the submissions of the 2 opposing sides. Under section 362 of the *criminal procedure code*, this court is mandated to exercise its revision powers over all subordinate courts' orders or findings in case there are incorrectness, illegality or impropriety in such orders or findings.
3. The basis of this application is the submissions that the applicant were not granted the opportunity to be heard on their objection to bail. It is true that under article 49(1)(h), the right to bail available to all accuseds persons. However, the same right may be denied should there be shown existence of compelling reasons. This presupposes that the prosecution side must be accorded the opportunity to risk their objections, if any, to the applications for bail.
4. In this matter, the record shows that when the respondents first appeared in court, the prosecution gave notice of intention to oppose bail. However, after taking plea, the court went on to spell out terms of bond to the Respondents. The record do not show if the objection of the prosecution were heard and considered. The court ought to have done so before placing the respondents on bail.
5. It is for this reason that this court is convinced that there is incorrectness and impropriety in the orders aggrieved of the trial court. I therefore allow this application. The orders of the Hon. Chief Magistrate issued on 8.4.2022 are hereby revised and set aside. The bonds issued to the respondents are accordingly cancelled. I order that this matter be referred back to the trial magistrate for the hearing of the prosecution objection to the respondents' application for bail. Parties to accordingly appear before the trial magistrate for further orders on August 1, 2022 at 9:00AM.

Orders accordingly.

D. O. OGEMBO

JUDGE

28.7.2022

