



**Sheng v Republic (Miscellaneous Criminal Case E023 of 2022)
[2022] KEHC 10246 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 10246 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CRIMINAL CASE E023 OF 2022**

RB NGETICH, J

JULY 28, 2022

**IN THE MATTER OF AN APPLICATION BY YE SHENG TO BE
RELEASED ON REASONABLE BOND TERMS**

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF SECTION 123(3) OF THE CRIMINAL
PROCEDURE CODE, CHAPTER 75 OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF PRINCIPLES OF NATURAL JUSTICE AND THE
RULE OF LAW**

BETWEEN

YE SHENG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before the trial court could pronounce itself on the issue of release of the applicant on reasonable bail terms, the applicant filed the current application before this court by way of a notice of motion application filed on 20th May 2022 under a Certificate of Urgency seeking orders to have the applicant submitted to reasonable bail terms pending the hearing and determination of the Kiambu Chief Magistrate Criminal Case no. E638 of 2022 on such terms that the court may deem fit.



2. The application is premised on the following grounds; that on 4th April 2022 the applicant was charged before Kiambu Chief Magistrate Criminal case no E455 of 2022 on the charges of causing grievous bodily harm and he was released on reasonable bail terms. On 10th May 2022 the applicant was again arrested and charged in Kiambu Criminal Case No. E638 of 2022 on the charge of Uttering a threat to Kill Contrary to Section 223 of the *Penal code*. The applicant was could not plead to the charges due to the absence of a Chinese translator and he was in custody for a long time.
3. Article 49(1)(h) of *the Constitution* of Kenya provides that each accused person is entitled to reasonable bail terms unless there are compelling reasons tabled by the Prosecution to deny the accused bail.
4. The applicant was denied bond/bail by the trial court on ground of an existing criminal case.
5. The accused averred that he is an elderly person aged 60 years suffering from chronicle diseases; hypertension and diabetics which require constant medical attention.
6. The application is supported by the annexed affidavit of Zhou Xindong who averred that the complaint that led to the arrest of the applicant involves disputes between Cheng Shuitong and himself as the directors of Fujian Shian Investment & Development Ltd and the directors are unable to settle as to the running of the business.
7. He further averred that the motive is to coerce him to relinquish his rights in the company and the continued detention of the applicant is prejudicial due to the applicant's ill health.
8. When the matter came up on 30th May 2022, Mr. Gacharia for the state informed the court that the trial court was yet to pronounce itself on the release of the applicant on reasonable bail terms pending trial. The ruling at the trial court was slated for 7th June 2022.
9. Counsel Nyaundi for the applicant urged the court to allow the application as the applicant has been detained from 10th May 2022; the applicant is old aged 60 years and ailing.
10. Mr. Gacharia for the state urged the court to grant him time to file a Replying Affidavit in response to the application. The replying affidavit was filed on 18th July 2022 and sworn by Chen Shuitong. He averred that he is in fear as the applicant being a violent man and quick to anger may actualizes his threat and kill him if released on bond and there is likelihood that he will interfere with the witnesses and there is a need to protect witnesses and urged the court to deny him bail.

Analysis and Determination

11. I have considered grounds of the application, averements in the affidavits filed and what is in issue is whether the applicant has demonstrated that he is entitled to bond pending trial in Kiambu Chief Magistrate Criminal case No.E638 of 2022.
12. The trial court delivered ruling on 9th June 2022 declining to grant the applicant bail stating that there are compelling reasons to deny accused bond. The trial Magistrate indicated that there is fear of interference with witnesses as the applicant has threatened to kill the complainant in Kiambu Criminal Case No. E455 of 2022.
13. The court has the discretion to grant bond/bail to an accused person, though the discretion has to be exercised judiciously.The court in exercising the discretion to grant bail should advance the reasons for granting or refusing to grant bail.
14. Under the Bail and Bond Policy Guidelines presumption of innocence dictates that accused persons should be released on bail or bond whenever possible and pretrial detention should not constitute



- punishment and the fact that accused persons are not convicts should be reflected in their treatment and management and accused persons should not be subject to the same rules and regulations as convicts.
15. The primary consideration in deciding whether or not to admit an accused person to bond/bail is the accused attendance in court. The trial court in its ruling indicated that the accused is likely to interfere with the witnesses.
 16. Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, stipulates that:
 - (1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding Section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - (a) the nature or seriousness of the offence;
 - (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and
 - (d) the strength of the evidence of his having committed the offence;
 - (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
 - (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - (b) should be kept in custody for his own protection.
 17. I note from averments that the accused had been charged with two offences of Greivous Harm Contrary to Section 234 of the Penal Code and subsequently he was charged with offence of Uttering a Threat to Kill Contrary to Section 223 of the Penal Code which gave rise to this application.
 18. The offence subject to this application isailable. The complainant has sworn affidavit indicating that the applicant threatened to kill him and if released, he may actualize the threats.
 19. I note from averments in affidavits filed there is business rivalry between accused and complainant and there is need to balance between the applicant's constitutional right to liberty and the public interest in having suspected offenders prosecuted for their alleged crimes; the rights of the victims of the offences as against rights of an accused person.
 20. There is no doubt that the applicant has been denied bond on allegations by complainant's which are yet to be proved through trial. The complainant in the replying affidavit alleged threats to kill. The applicant has been charged in respect to the allegations. The allegations are yet to be proved.
 21. From the trial court ruling, I note that the social report indicate some of those interviewed assert the fears of complainant and some speak well of the applicant. In my view denying applicant bond on the said allegations amount to a conclusion that he is guilty of the charge of threatening to kill.
 22. I have considered the nature of the offence, the age of the accused and his health and contents of social report filed before the trial court .From the averments, the accused is 60 years old. Documents have been attached to supporting affidavit to show that he is suffering from diabetes and hypertensive and



from averments by counsel, current Covid-19 Pandemic places him at disadvantage being a vulnerable person.

23. In view of the health condition of the accused and advanced age, it would be in the interest of justice to grant the accused bond and as indicated in the trial court ruling the hearing be fast tracked to allow key witnesses to testify.

Final Orders:-

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- 1) Applicant may be released on bond of kshs 500,000/= with one surety of a similar amount.
- 2) The applicant's passport to remain in court until hearing and determination of the criminal case.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 28TH DAY OF JULY, 2022

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RACHEL NGETICH

JUDGE

In the Presence of:

Kinyua – Court Clerk

Ms. Lukoye and Mr. Mukuna for Applicant

Ms. Wanjiru holding brief for Complainant

