



**Achola v Republic (Criminal Revision E480 of 2024)
[2025] KEHC 285 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E480 OF 2024
PN GICHOHI, J
JANUARY 21, 2025**

BETWEEN

WYCLIFF OMONDI ACHOLA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The background of this Revision is that the Applicant was arraigned before the trial court on August 26, 2024 in Nakuru CMCCR. No. 1871 of 2024 where he faced two counts.
2. In Count I, he was charged with the offence of obtaining money by false pretences contrary to section 313 of the *Penal Code*.
3. The particulars of the offence were that on diverse dates between January 2024 and 13th August 2024 at Nakuru township within Nakuru County with intent to defraud obtained from the administrator of The Estate of The Late Shem Nacheri Wamunga (Deceased) a sum of Kshs. 3,318,000/= by pretending that he was an Advocate of the High Court of Kenya competent to act for the said Estate of The Late Shem Nacheri Wamunga (Deceased) in the sale of the property Title Number Nakuru Municipality Block 4/194 a fact he knew to be false.
4. In Count II, he was charged with the offence of pretending to be an Advocate contrary to section 33 as read with section 85 (1) of the *Advocates Act*.
5. The particulars of the offence were that on diverse dates between January 2024 and 13th August 2024 at Nakuru township within Nakuru County wilfully pretended to be qualified or recognized by law as qualified to act as an Advocate of the High Court of Kenya and received from The Estate of the Late Shem Nacheri Wamunga (Deceased) a sum of Kshs. 3,318,000/= as legal fees to act for the said Estate of The Late Shem Nacheri Wamunga (Deceased) in the sale of the property Title Number Nakuru Municipality Block 4/194 a fact he knew to be false.



6. He denied both charges and urged that he be released on bond. However, the Prosecution responded that the Applicant had a series of previous convictions and that the Investigating Officer had noted that the Applicant had threatened the Advocates and members of the family.
7. The trial court ordered for a pre- bail report for mention on 9th September 2024 but come that date, the Prosecution still opposed bond on the grounds that the accused was still a flight risk and a threat to the witnesses. The trial court ordered that the accused be remanded in custody for hearing on 30th October 2024 with a mention on 23rd September 2024. The bond terms were to be reviewed on hearing date.
8. On 23rd September 2024, Mr. Olaly Cheche, Advocate for the Accused person, renewed the application for bond but it was strongly opposed by the Prosecution on the grounds that the trial court had already pronounced itself on the issue and that the Investigating Officer had already given compelling reason which the court could have duly acted on.
9. After hearing both parties, the trial court delivered its ruling on 9th October, 2024 thus:-

“...At the time of plea on 26/8/2024 the prosecution objected to the accused person being admitted to bond and raised grounds that the accused is a flight risk and likely to interfere with witnesses. From the society inquiry there is caution that the accused be admitted to stringent bond terms. The allegation of accused’s release being a threat to the prosecution is serious. The case has not taken off to ascertain the gravity of this allegation...For now since the situation from plea to date has not changed, the circumstances will be maintained. The issue of the bond of the accused to be considered after some prosecution witnesses have been heard. For now accused be remanded in custody..14 days right of appeal explained. ”
10. Aggrieved, the Applicant has now moved this Court vide application dated 15th October 2024 challenging the decision to deny him bond and also sought release of a motor vehicle registered in the name of Roselyne Akinyi Odewa as it does not belong to the Applicant.
11. He contends that the Investigating Officer swore an Affidavit alleging that the Applicant is a flight risk and that he had threatened an advocate, yet he did not tender in court statements recorded to that effect. Further, he stated that the Investigating Officer alleged that the Applicant had previously been convicted in Nakuru CMCR E 570 of 2021 and E517 of 2022 which may have persuaded the trial court to deny him bond.
12. He stated that the two cases involved other parties and not him. That case in in CMCR E570 of 2021 was withdrawn while E517 of 2022 was a miscellaneous case and therefore, the issue of conviction did not arise.
13. Lastly, he termed the decision by the trial court as not only an infringement to his constitutional right, but also incorrect and improper. He urged the Court to call for and examine the proceedings before the trial court to satisfy itself on legality of the court’s decision to deny him bond. He swore an Affidavit on 21st November 2024 where he emphasised his application.
14. On 17th December 2024, the Respondent filed a Response dated 16th December 2024 and while highlighting the circumstance that led the prosecution to oppose bond, he contended that the Advocate watching brief for the deceased’s family had sought stiffer bond terms but left the trial court to make its decision.
15. He reiterated that the trial court had denied the Applicant bond as the situation had not changed, and therefore gave witnesses a chance to testify before it could consider whether to grant bond. In the



circumstances, the Respondent's view was that this Court does exercise its discretion in the matter in granting bond or cash bail.

16. He however suggested that this Court can request for a probation report so that it can be guided by sentiments of the parties and if there is any other compelling reason that can assist the Court.
17. Lastly, he urged that in event the Court deemed fit to grant the Applicant bond, then he prayed that stringent bond terms be issued to the Applicant including :- a warning not to threaten or interfere with witnesses ; that the Applicant reports every 14 days at the Police Station where he was charged and; to desist from handling or masquerading as an Advocate in any legal matter.

Determination

18. It is a fact that High Court has powers under Section 362 of the Criminal Procedure Code to :

“...call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
19. This Court has already called for the trial court's record and proceedings in this matter and has considered the arguments advanced by the parties herein. It cannot be overly emphasised that under Article 49 (1)(h) of the Constitution, “An accused person has a right to be released on bond or bail on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”
20. Despite the above constitutional right for an accused person to be released on reasonable bond terms as argued by the Applicant, Article 49 (1) (h) also shows that the said right is not absolute. That right can be limited or denied by the Court if there are compelling reasons to do so. The Respondent had brought to the attention of the trial court that the Applicant is a flight risk and that he has been threatening witnesses hence likely to interfere with the witnesses.
21. The Bail Information Report called for and availed before the trial is dated 9th September 2024. On the Victim's Impact Statement, the Probation Officer states:-

“ The Complainant is the State through the ODPP. One of the witnesses contacted expressed concern that the accused has had several incidents of fraud, has issued threats to some witnesses and that he is flight risk hence he should not be admitted to bond.”
22. The Probation Officer states that the accused person is married with four children, is known in Baraka Estate, Olive Inn in Kiamunyi location where he lives with his family and has lived there for more than ten years. One of his friends named Paul Oweke was willing to be his surety.
23. However, the Probation Officer further states:- “Community members contacted expressed varied sentiments about him. Whereas some described him as a person of good conduct, others suspect that he is an imposter.”
24. The above sentiments by the community that they suspect the Applicant to be an imposter cannot be ignored going by the nature of the charges that the Applicant is facing before court and, bearing in mind that Probation Officer's Report also shows that the Applicant herein stated that :- “he previously worked as a clerk at a law firm in Nakuru and he later engaged in freelance conveyancing until the time of the arrest.”



25. It is clear that the Probation Report herein contains sufficient material that the Applicant has issued threats to witnesses. It must be emphasised that under Article 50 of the Constitution, “Every person has a right to have any dispute that can be resolved by application of the law decided in a fair and public hearing before a court...”
26. It is this Court’s considered view that the right referred to above is to every person whether an accused or a witness in a criminal case. Threats to witnesses not to testify before a court of law in the circumstances of the case before the trial court is meant to keep them off from pursuing justice and that amounts to interference with their right to testify.
27. It is not fatal that such witnesses have not filed statements or sworn affidavits to that effect in that case. Such threats are compelling reasons to deny the Applicant bond. However, the Ruling by the trial court shows that the denial of bond was not total. It is for purposes of allowing some of the witnesses to testify first to enable the trial court revisit the issue of bond.
28. The record shows that at the instances of the Applicant herein, the case could not kick off on 30/10/2024 despite the eight (8) witnesses being in court and the Respondent herein ready to proceed. The case is now scheduled for hearing 3/2/2025.
29. In the circumstances, the trial court’s ruling is neither irregular nor improper to warrant interference by this Court by way of revision or otherwise. Further, the issue of release of any exhibits to the Applicant is not one for consideration by this Court and in this application.
30. In conclusion, the Court makes the following orders:-
 1. The Applicant’s application is dismissed for lack of merit.
 2. The trial court’s original file being MCCR. Case No. E1871 of 2024 be and is hereby returned to the Chief Magistrate’s Court to proceed for hearing as scheduled.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 21ST DAY OF JANUARY, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Accused person -Applicant

Mr. Kihara for the Respondent

Ruto, Court Assistant

