



REPUBLIC OF KENYA



Githinji & 2 others v Republic (Miscellaneous Criminal Application E006 of 2025) [2025] KEHC 2599 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2599 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CRIMINAL APPLICATION E006 OF 2025**

EM MURIITHI, J

MARCH 13, 2025

BETWEEN

KELVIN KANYORO GITHINJI 1ST APPLICANT

MISHECK KAMAU WARUI 2ND APPLICANT

WILLIAMSON WARUI GITHINJI 3RD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed a notice of motion dated 12th February, 2025 seeking review of bail terms granted by the trial court. The Applicants are charged with eight offences in Baricho Law Courts Criminal Case No E-074 of 2025. They were granted bail of Kshs 200,000/-] each with a surety of similar amounts on 3rd February, 2025. On 11th February, 2025 after perusing the pre-bail Report, the Court enhanced the bond terms to Kshs 500,000/- with no alternative to cash bail.
2. That the applicants being aggrieved with the trial Court directive, seek this court to Review, revise and/or set aside the decision of the subordinate Court at Baricho.
3. The issue for determination is whether the bail/bond terms should be reviewed.
4. The applicants submit that the enhancement of the bond terms without valid reasons amounts to a punitive measure rather than a mechanism to ensure the Applicants' attendance at trial.
5. Section 123A of the *Criminal Procedure Code* requires courts to consider:
 - a. The nature and seriousness of the offense;
 - b. The character, antecedents, associations and community ties of the accused;



- c. The likelihood of the accused attending court;
 - d. The public interest, security, and the need to prevent further crime; and
 - e. The accused person's ability to meet bail terms.
6. The applicant submits that the primary purpose of bail is to secure the accused's attendance at trial, not to punish them before conviction.
 7. There is no question that the High Court has authority to review bail terms. In *Republic v David Muchiri Mwangi* [2022] eKLR, the High Court revised bond terms after noting that bail should not be used as a tool to keep an accused in custody where there is no demonstrated flight risk.
 8. In this case, there is no evidence that the Applicants are flight risks. They do not possess passports, have not attempted to abscond since their arrest, and have no history of failing to attend court proceedings. The probation report also confirms their willingness to abide by court directives.
 9. Further, the trial magistrate did not properly apply Section 123A *CPC*, particularly subsection (1)(d), which mandates that bail terms should consider the accused's ability to meet them. The requirement of a Kshs 500,000 surety is excessive and indirectly amounts to a denial of bail.
 10. The applicant deposes that the prosecution after perusing through the pre bail reports was of the view that the accused persons could be released on cash bail terms of Kshs 100,000/each or in the alternative the court to maintain its earlier terms of release. The applicants submit that the law allows the review of bail terms where the conditions imposed are unreasonable or unfair.
 11. The respondent submits that this Court be guided by the Bail and Bond Policy Guidelines captured under paragraph 4:9. The respondents have not opposed the application in their replying affidavit.
 12. This Court had occasion to consider the terms of bond and takes the view that bail/bond terms should not be the exact value of the subject matter of the criminal charge; it should be reasonable and not be punitive. See *Cyril Kipruto Serem v Republic* [2020] eKLR, that the bond terms are not meant to be "an approximation of the value of the subject matter of the criminal charge. It does not follow that the higher the value of the property subject of the trial the higher the bail bond terms. It is with respect faulty reasoning because, were it so, those poor offenders on charges, for example, of destruction or attempted fraudulent obtaining, of property of high value would never secure hefty bail and bond terms imposed. Terms of bond are not meant to punish the accused for any perceived guilt for the charges levelled against him. Nor are the terms meant to ensure he is detained awaiting trial to avoid his escape or to ensure punishment."

Orders

13. The accused's bail is reviewed to a bond of Kshs 200,000/- with one surety of the same amount for each accused. The Court does not consider it appropriate to grant a cash bail alternative in this case in view of the serious nature of the charges.

Order accordingly.

DATED AND DELIVERED ON THIS 13TH DAY OF MARCH 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:



Mr. Makhandia for 1st Applicant.

Mr. Karoki for the 2nd and 3rd Applicants.

Mr. Mamba for the DPP.

