



**LNK v Republic (Criminal Revision E002 of 2025)
[2025] KEHC 3723 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3723 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL REVISION E002 OF 2025
LN MUTENDE, J
MARCH 24, 2025**

BETWEEN

LNK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. LNK, the Applicant, approached this court through an application dated 5th February, 2025, seeking revision and/or setting aside the decision delivered by the Resident Magistrate sitting at Rumuruti on 30th December, 2024 in MCSO No E027 of 2024 and to admit the Applicant on reasonable bail terms.
2. The application is premised on grounds that the Applicant was charged with the offence of Incest contrary to Section 20(1) of the *Sexual Offences Act*; with an alternative count of Committing an Indecent Act with a child contrary to Section 11(1) of the *Sexual Offences Act*. And, another offence of Committing an Indecent Act with a child contrary to Section 11(1) of the *Sexual Offences Act*; charges that he denied.
3. That bail was denied on the basis of an affidavit filed by the investigating officer which did not disclose reasons for denying the Applicant bail.
4. That the Applicant, a Kenyan citizen has a fixed place of abode at Rumuruti, where he lives with his wife RM and 5 children and has other familial ties within Laikipia County. He denies having any relationship whatsoever with the minor victim’s mother, WM who resides at Nyandarua County and has no proximity and/or access to witnesses who will tender evidence before the trial court.
5. That he is not a man of means and neither is he a flight risk as he has no passport to enable him leave the jurisdiction of the court or Country. That had a pre-bail report been filed the actual physical location, familial ties and flight risk capacity of the Applicant would have been confirmed. That the contention



that the Applicant is a threat to the minor who is in the care of NEST Children's Home, Limuru is not true.

6. And, no compelling exceptional reasons were given to deny the Applicant bail.
7. No response was filed by the State/Respondent.
8. The application was disposed through oral submissions. It is urged by Ms. Mwiti learned counsel for the Applicant that the Applicant has been in custody since 30th December, 2024 which is in violation of his rights. That the minor being in safe custody; the Applicant will not interfere with her. That other witnesses being the mother of the minor and a police officer, there will be no interference. And he will abide with terms set.
9. In response, learned prosecution counsel, Mr. Obutu, urged that the right to bail was not absolute as there are conditions where bail may not be granted; if there will be interference with witnesses. That if there will be change of circumstances then bond may be reviewed.
10. I have considered the application, affidavit in support and rival arguments in that regard. The primary supervisory jurisdiction of the High Court is founded on the constitution and statute which donates the power to review decisions made by the subordinate court. Article 165(6) (7) of the Constitution provides thus;
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
11. Section 362 of the Criminal Procedure Code provides thus;

The High Court may 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.
12. The supervisory jurisdiction therefore includes principles of illegality where the court acted contrary to the law by flouting what is provided; failure to follow proper procedure such that the decision was irregular and generally failing to ensure justice is accessible.
13. The law presumes an accused person innocent until proven guilty. The presumption of innocence is a fundamental principle in law which is embedded in law. Article 50(2) (a) of the Constitution provides thus;
 - (2) Every accused person has the right to a fair trial, which includes the right—
 - (a) to be presumed innocent until the contrary is proved;
14. The liberty of an accused is safeguarded as it protects individuals from wrongful punishment until evidence is tendered that establishes their guilt. This also minimizes miscarriage of justice since the law protects both the victim and the accused and there is the question of fair trial. The right to be on bond pending trial is provided for in Article 49(1) (h) of the Constitution as follows;
 1. An arrested person has the right –



(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

15. In granting bond or not the court takes into account various cogitations that include the nature and seriousness of the offence; whether the accused is likely to flee or evade trial; the strength of the evidence to be tendered, public safety as to whether he may pose a danger to the victim or witnesses and even the community at large and if the accused has antecedents that call into place a social inquiry.
16. Looking at the impugned ruling, the court was of the considered view that there existed compelling reasons to deny the Applicant bail. According to the reasoning of the court following averments in the affidavit deposed by the investigating officer, the relationship that existed between the Applicant and the complainant as well as prosecution witnesses was a compelling reason.
17. It is argued by the Applicant's counsel that the victim has since been moved to stay at NEST Children's Home, a place that provides protective custody for children.
18. The issue of bail is primarily a matter for the trial court. The trial court considering the question evaluates several factors. The court which has the discretion to consider the question ought to make a decision based on the balance of the rights of an accused, the interest of justice, public safety of the accused and the rights of the victims. In *Joseph Hendrix Waswa v Republic* [2019] the Supreme Court pronounced itself on the issue of the victims of crime actually participating in criminal cases. Ordinarily views of victims come out prominently in pre-bail reports would also capture views of the accused and the community at large. For reasons aforesaid I agree with the Applicant's counsel that the pre-bail report would have been helpful.

19. In *Harish Mawjee & another v Republic* [2020] eKLR Lesiit J (as she then was) held that;

“There are certain overarching principles that govern the administration of bail and bond by Courts. First of all, courts have sole discretion to give determinate bond terms and they can impose a combination of terms including supervision of accused released on bail if found necessary. Secondly, bond terms should not be arbitrary, but the court must consider the relevant factors affecting issuance of bond including penalty of offence and the accused ability to meet the bond terms. Thirdly, the bond terms should not be excessive or unreasonable. Fourthly, an accused has right to seek review of bond terms from trial court or high court or appeal. The issue is when an accused can enjoy bail review?

It is settled that an accused can apply for review of bond terms given by the trial court. The application should be made before the trial court which granted the bond. If, however the accused is still aggrieved by the decision of the trial court, he can still approach the higher court for relief.” (Emphasis added)

20. It is apparent that the trial court has the discretion to grant bail and an application should be made for review before the same court before approaching the High Court. In *Republic v Diana Suleiman Said & another* [2014] eKLR it was stated that;

“The changed circumstances test is one of a common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail,



so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused”

21. The court considering review should consider if circumstances have changed calling for review of the order. In the circumstances I find the Applicant having acted prematurely by moving to the superior court before seeking review before the court seized of the matter.
22. For that reason, the application fails and is dismissed.
23. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF MARCH, 2025.

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L.N. MUTENDE

JUDGE

