



REPUBLIC OF KENYA



**Maina v Republic (Criminal Revision E007 of 2025)
[2025] KEHC 3420 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
CRIMINAL REVISION E007 OF 2025
J WAKIAGA, J
MARCH 19, 2025**

BETWEEN

SUSAN WANGARI MAINA APPLICANT

AND

REPUBLIC RESPONDENT

(Revision from the Ruling from Criminal Case No MCCR E001 of 2025 in the Chief Magistrates Court at JKIA Law Court delivered on 27th January 2025)

RULING

1. The applicant was charged with the conspiracy to traffic in narcotic drugs contrary to section 4B(4) as ead with section 4B (5) of the [Narcotic Drugs and Psychotropic Substances Control Act](#) No 4 of 2022 the particulars of which were that on unknown dates at an unknown place within the Republic of Kenya jointly with another not before the court conspired to traffic in narcotic drugs namely cocaine to wit 3962.75 grams with the market value of kshs 15,851,000
2. She pleaded not guilty and by a ruling of the court dated 27th January 2025, was denied bond on the ground that the same did not have fixed place of abode and was therefore a flight risk.
3. By an application dated 12th February 2025 the same moved to this court for an order that the court calls for and examine the record of the proceedings of the trial court for the purposes of satisfying itself as to the correctness , legality or propriety of the order denying the applicant bail
4. It was further pleaded that pending the hearing hereof , the court be pleased to stay the proceedings in MCCR No E001 of 2025 until the determination of the application .
5. The application was based on the grounds that the court did not consider the applicants submissions and ended up convicting the applicant before the trial began noting that the prosecution did not place any compelling reasons before the court.



6. It was contended that the court relied on extraneous factors in reaching her determination that the applicant was a flight risk on the basis that she has a safe but not fixed abode and may interfere with the case
7. In response to the application, the state filed grounds of opposition in which it was contended that the trial court applied and considered the argument of both the applicant and the respondent in reaching her determination and that the applicant had not placed before the court any material, evidence to show that the court acted in bad faith and or errored in law in reaching the determination herein

Submissions

8. On behalf of the applicant, it was submitted the applicant was denied bond while her co-accused to a consolidated charge sheet was admitted to a bond of kshs 100,000 yet the same was a Kenyan and that the prosecution did not prove that she was a flight risk. It was contended that the same was sickly in need of medical attention from time to time and a mother of a six-month-old baby.
9. It was contended that the applicant was willing comply with any terms and conditions including reporting to court to mitigate on the issue raised by the court of lack of fixed abode
10. On behalf of the respondent, it was submitted that the trial court rightly found that the applicant was a flight risk and a repeat offender, having been arrested for a related offence who did not provide the trial court with the details of where she lived and that the right to bail was not absolute.
11. It was submitted that the in exercising its supervisory jurisdiction under Article 165(7) of the [Constitution](#) and sections 362 and 363 of the [Criminal Procedure Code](#), the court can only interfere when an irregularity or violation of the law has been committed as was stated in [Prosecutor v Stephen Lesinko](#) [2018] eKLR

Determination

12. In this matter, the undisputed facts are that the prosecution presented to court an affidavit in opposition the release of the applicant on bond to which the same filed a replying affidavit and upon hearing the parties, the court found as a fact that there were compelling reasons to deny the applicant bond and mitigated the fact of the said denial by offering to expedite the hearing of the case.
13. It was alleged by the applicant that her co-accused was admitted to bond but the same failed to provide any proof thereof. In any event this court has said before in [R v Joseph Kuria Irungu alias Jowi & another](#) that the accused persons jointly charged together are treated independently and the fact that one is admitted to bond does not mean that the other ought to be admitted too.
14. As submitted by the prosecution, the supervisory powers of this court is limited to correcting the decisions of the lower courts as stated in the case of [Prosecutor v Stephen Lesinko](#) [*supra*] where the decision is
 - a. Is grossly erroneous
 - b. Where there is no compliance with the provision of the law
 - c. Where the finding of facts affecting the decision is not based on the evidence or is a result of mis-reading or non-reading of the evidence on record
 - d. Where the material evidence of the parties is not considered



- e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of a lesser offence.
15. The court can only review the order or decision of the lower court if it is satisfied that the decision order or ruling is tainted with illegality, error of law or impropriety or that there was an irregularity in the proceeding that gave rise to the decisions , order or finding complained of.
16. In this matter the trial court based her decision on the material presented before her and came to the conclusion that the applicant was a flight risk and it is not for this court on revision to substitute its finding of fact with that of the lower court on an application for revision unless the conditions set out in sections 362, 363 and 364 are met, as the court is not sitting on appeal from the said determination .
17. I am not satisfied that the applicant has established any error and or irregularity on the part of the trial court and her only remedy is to approach the trial court for review of the decision complained of on account of either change of circumstances or discovery of any new material .
18. The trial court has mitigated the effect of the denial of bail by granting expediated hearing of the main suit in compliance with the provisions of Article 50 of the Constitution.
19. It follows that the application herein lacks merit and is therefore dismissed.

SIGNED DATED AND DELIVERED AT MAKADARA THIS 19TH DAY OF MARCH 2025

J. WAKIAGA

JUDGE

