



**Maina v Republic (Criminal Revision E240 of 2024)  
[2025] KEHC 3525 (KLR) (18 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3525 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL REVISION E240 OF 2024  
LN MUTENDE, J  
MARCH 18, 2025**

**BETWEEN**

**SIMON RUOYA MAINA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Simon Ruoya Maina, the Applicant, approached the court through a Notice of Motion dated 4<sup>th</sup> December, 2024, seeking admission of the Applicant on bond and/or cash bail on medical grounds.
2. The application is premised on grounds that the Applicant was charged with the offence of Obtaining money by false pretence in Rumuruti Criminal Case No. E139 of 2024 and Rumuruti Criminal Case No. E123 of 2024.
3. That Rumuruti Criminal Case No. E139 of 2024 was transferred from Nyahururu to Rumuruti without his knowledge and due to the confusion, it was declared that he had absconded hence his bond was cancelled. And, following re-arrest a new file was opened at Rumuruti being Rumuruti Criminal Case No. E123 of 2024 *Republic v Simon Ruoya Maina*.
4. Following the stated events, Hon. E. Ngigi SPM denied him bond, and his advocate was disqualified from representing him for conflict of interest.
5. That throughout the prosecution's case the Applicant exhibited mental illness and incapacity and remained mute during trial hence did not cross – examine the witnesses.
6. That previously the Applicant suffered head injuries as a result of a road accident, injuries that have rendered him severely mentally challenged hence he needs medical attention.
7. That the Applicant is willing to settle the issue with the complainant as the offence is purely breach of contract and not a criminal offence.



8. That there are exceptional circumstances requiring being granted bail so that the Applicant can seek specialized medical attention, stabilize mental capacity and settle the matter out of court.
9. In response, the State through learned counsel Mr. Obutu argues that a file can only be transferred in the presence of the accused therefore reasons given are not plausible. That the bond is granted to enable the accused person enjoy his liberty during trial but the Applicant failed to comply with orders granted. And after the Magistrate cancelled bond, the Applicant should have had audience with the court to review the bond terms before approaching the High Court.
10. Regarding settling the matter, it is urged that there is no law that bars an accused person from settling the matter with the complainant while in custody.
11. I have considered rival submissions and also perused the Lower Court record. The supervisory jurisdiction of the High Court is governed by the constitution and statute. Article 165(6) (7) of the constitution stipulates 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.
12. 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.
13. The authority bestowed upon the High court enables it to review the illegality, and irregularity of the order made by the Lower Court.
14. The complaint by the Applicant is the question of his liberty following cancellation/denial of bond.
15. An accused person's liberty should not be compromised because he is presumed innocent until proven guilty. Detaining a person who has not yet been convicted can impact of their life significantly. The right to be on bond pending trial is enshrined in the constitution. Article 49(1)(h) of the constitution provides thus;
  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.
16. In determining whether or not to release an accused person on bond, the court would ordinarily consider the nature of the offence, seriousness of the punishment to be meted out incase of a conviction; and the character and antecedents of the accused person where necessary. The question to be answered is whether there are any compelling reasons requiring the accused to be denied bail.
17. Compelling reasons were stated in Republic v Joktan Mayende & 3 Others [2012] eKLR as;
 

“...the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail



should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the constitution.”

18. What is before court is not an initial application for bail. The Applicant was denied bail by the Lower Court. Although the application framed is brought pursuant to Section 362 of the Criminal Procedure Code, the relief sought is grant of bond/bail on medical grounds.
19. Bail is generally a matter for trial court which is seized of the discretion to decide whether or not to grant bail. In the case of Harish Mawjee & Another v Republic [2020] eKLR Lessit 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. I have perused Rumuruti Criminal case No. E139 of 2024 Republic v Simon Ruoya Maina; and, Rumuruti E015 of 2024 Simon Ruoya Maina & Another that were availed. The Applicant who was represented in the matter (E139) where the Applicant was stated to have obtained Kshs.2,380,000/- was denied bail. The court denied him bond on the grounds that he was granted a cash bail of Kshs.20,000/- in case No. 119/2022 where he proposed to compensate the complainant. He was to return to court on 17<sup>th</sup> August, 2022 but he absconded. Subsequently he was arrested on 21<sup>st</sup> February, 2023. However, he was granted a cash bail of Kshs.100,000/- on 29<sup>th</sup> March, 2023. Thereafter, he absconded. In the result the matter was withdrawn pending execution of the warrant of arrest.
21. What was established is the fact of the Applicant being a flight risk who may attend court or not.
22. The Applicant has however introduced a question of ailment. He admits having received the amount of money in issue but seeks time to compensate the complainant.
23. As afore persuaded, the trial court is the one seized of the discretion of granting bail. And where the terms granted are not reasonable the court has the discretion to review its orders. Where there is change of circumstances, there is no reason why bail terms cannot be reviewed. In Republic v Diana Suleiman Said and Another [2014] eKLR, a case that is persuasive, Muriithi J 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”

24. Notably, the affidavit in support of the application is deposed by the Applicant. It is stated that prolonged incarceration without proper medical attention is causing him to fall into depression and anxiety. The medical documents annexed to the application are inconclusive as the Applicant was referred to another lab of choice due to inavailability of the test requested.
25. If it will be established that circumstances would be different then there would be no reason for not reviewing the bail terms which can only be done by the trial court after engaging the victim as well.
26. In the premises, it is my finding that moving to the High court for orders sought was premature. The application for review shall be made before the trial court.
27. For that reason, the application is declined.
28. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF MARCH, 2025.**

.....

**L.N. MUTENDE**

**JUDGE**

