



**Nancy v Republic (Miscellaneous Criminal Application
E151 of 2024) [2025] KEHC 3571 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3571 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS CRIMINAL APPLICATION E151 OF 2024**

**M THANDE, J
MARCH 14, 2025**

BETWEEN

HARUN KARIUKI NANCY APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant is charged with others in Mariakani Criminal Case No. 255 of 2024 with the offences of robbery with violence contrary to Section 296(2) of the penal Code and handling stolen property contrary to Section 322(1)(2) of the *Penal Code*. His application for bond pending trial was declined by the trial magistrate by a ruling of 26.9.24.
2. The Applicant has now moved to this Court seeking bail/bond. He averred that he has a young family consisting of a house wife and 2 young children who have suffered much in his absence. Further that the charges against him are fabricated.
3. The application is opposed by the Respondent, vide a replying affidavit sworn on 26.8.24 by PC Moses Odira, one of the investigating officers in the matter. He averred that the Applicant jointly with another are facing 6 counts of robbery with violence in Mariakani MCCR E251/2024, E252/2024, E253/2024, E254/2024, E255/2024 and E256/2024. They also face the charge of gang rape contrary to Section 10 of the *Sexual Offences Act* in MCSO E037 of 2024.
4. It was further averred that the Applicant has 4 other pending cases, namely robbery with violence in Kilungu MCCR No. E046/2024, Defilement in Mariakani MCSO No. E046/2024, Obtaining money by false pretense in Mombasa CR No. E347/2024 and Assault in Mariakani MCCR No. E026/2023. He was also convicted in Maraikani Law Courts of the offences of Affray in CR. No. 268/2020 and operating a bar without a licence in MCCR No. E087/2024. Further that the Applicant committed offences while out on bond.



5. It is the Respondent's case that owing to the previous convictions and the other serious offences that he is facing, there is likelihood of the Applicant absconding. Additionally, that the Applicant has been involved in a series of robbery with violence is believed to be armed and dangerous to the extent that in MCCR E223/24, the victim, a military man succumbed to his brutality. There is therefore concern for public safety and interference with witnesses if the Applicant is released on bond as he has been recorded threatening witnesses on the phone while in custody. He added that averred that the Applicant is a flight risk as prior to their arrest, the Applicant and another evaded arrest by moving from one county to another. Further, that he has no fixed abode as his house was torched by irate members of the public who have vowed to lynch him if released. Additionally, that the bail report dated 9.9.24 filed by the Probation and After Care Services gave compelling reasons for the trial court to deny the Applicant bail.
6. The Applicant though granted leave to file a further affidavit did not do so and had not done so at the time of writing this ruling. The claims by the Respondent remain uncontroverted.
7. The right to bond/bail is guaranteed under Article 49(1)(h) of *the Constitution* which provides;
 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.
8. *The Constitution* has not defined "compelling reasons". However, our courts have defined the term in various decisions. In *Republic v Joktan Mayende & 3 others* [2012] eKLR, Gikonyo, J. had this to say about compelling reasons:

“And accordingly, 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*.”
9. Where the court forms a strong opinion that the reasons given by the prosecution opposing bail/bond are forceful and convincing, the bail/bond will be denied.
10. Section 123A of the *Criminal Procedure Code* (CPC) provides for instances when bail/bond may be denied as follows:
 - “(1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding section 123, in making a decision on bail and bond, the court shall have regard to all the relevant circumstances and in particular -
 - (a) the nature and seriousness of the offence ;
 - (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of having committed the offence.”
 - (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—



- (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
- (b) should be kept in custody for his own protection."

11. The Applicant has had prior convictions and is currently charged with multiple offences. The offences with which the Applicant is charged are serious. From the averments of the Respondent, the community within which the Applicant resides has expressed its outrage against him by torching his house and that he should remain in custody for his own protection. The conditions of Section 123A of the CPC are clearly established herein.
12. In the circumstances of the case, the reasons advanced by the Respondent in opposition to the Applicant's bail/bond application are both forceful and convincing. There is the likelihood of the Applicant absconding due the multiple serious offences he faces. There is the risk of interfering with witnesses who it is said he has threatened even when in custody. There is also the risk to his life following the torching of his house by irate members of the public and the fact that he has no fixed abode. Further that the Applicant committed offences while out on bond.
13. The foregoing are all, in my view, compelling reasons as contemplated under Article 49(1)(h) to warrant denying the Applicant bail/bond.
14. Accordingly, the Application is not merited and the same is dismissed.

DATED SIGNED AND DELIVERED IN MALINDI THIS 14TH DAY OF MARCH 2025

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M. THANDE
JUDGE

