



**Maina & 7 others v Republic (Criminal Revision E025 of 2025)
[2025] KEHC 4611 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E025 OF 2025
CW GITHUA, J
APRIL 9, 2025**

BETWEEN

**ANTHONY MWANGI MAINA 1ST APPLICANT
ISAAC MUGO GACHIE 2ND APPLICANT
JOHN CHEGE WANJIKU 3RD APPLICANT
JULIUS MWAURA KARANJA 4TH APPLICANT
ISAAC MAINA KURIA 5TH APPLICANT
DAVID MUNYUA KARIUKI 6TH APPLICANT
BARNABAS KURIA MAGUA 7TH APPLICANT
JAMES NJAU MURIMA 8TH APPLICANT**

AND

REPUBLIC RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion dated 24th March 2025 in which the nine applicants herein, through their learned counsel seek revision of the orders made by the trial court in Kigumo Chief Magistrate's Court Criminal Case No. E076 of 2025 in which they were admitted to bail pending their trial on terms that they deposit Ksh1,200,000 with no option of bond.
2. The applicants complain that the amount of bail granted by the trial court was excessive, unreasonable and punitive in light of the applicant's personal circumstances and the depressed economic environment currently prevailing in the Country. They also contended that the right to bail or bond pending trial was a fundamental statutory and Constitutional right which should be granted on terms that were reasonable which were not beyond the reach of an accused person.



3. Further, the applicants stated that they were family men and employees in different sectors and that since they were unable to raise the amount ordered as cash bail, their continued incarceration may render them jobless to the detriment of their dependants; that they were not flight risks and they were ready and willing to comply with all conditions the court may set.

On the above grounds, the applicants urged this court to review, set aside or quash the orders made by the trial court and admit them to bond or bail on reasonable terms.

4. The application was served on the respondent but by the time it was scheduled for hearing, the respondent had not filed a response in support or in opposition thereto.
5. During the hearing on 7th April 2024, the applicants were represented by three learned counsel namely, Mr. Mwangi Nduati and Mr. Mwika who were led by learned counsel Mr. Matu.

It transpired during the hearing that after the application was filed and this court gave directions on its disposal, the trial court on 1st April 2025 revised the bail terms earlier granted to the applicants. The revised terms were that the applicants were granted bond of Kshs 500,000 with one surety of a like amount or cash bail of Kshs.300,000 with one contact person.

6. In his submissions, Mr. Matu reiterated the grounds on which the application was premised as summarised above and emphasized that the applicants and their families were peasant farmers and they could not afford the cash bail or bond terms ordered by the trial court even after their variation on 1st April 2024.
7. Counsel further submitted that the applicants were bread winners for their families and some of them were elderly. He urged the court to allow the application and admit the applicants to reasonable bond terms which in his view meant terms that the applicants could afford.
8. On her part, learned prosecution counsel Ms Muriu submitted that the respondent was not opposed in principle to review of bond terms granted to the applicants but supported the revised terms issued by the trial court on 1st April 2025 arguing that they were reasonable. She submitted that a determination of what amounts to reasonable bond terms should be guided by the nature of the offence charged and value of the subject matter.

She urged me to admit the applicants to bond or bail on terms that would ensure their attendance during the trial.

9. I have carefully considered the application and the oral submissions made on behalf of the applicants and the respondent. I have also perused the original record of the trial court.
10. The record reveals that the applicants were charged with the offence of malicious damage to property contrary to Section 339 (1) of the *Penal Code* the particulars being that on diverse dates between 7th January 2025 and 9th March 2025, at Kinyona and Karinga wards in Kigumo Sub-county within Murang'a County, jointly with others not before the court, the applicants wilfully and unlawfully damaged water pipes valued at Kshs 1,329,260.4 the property of Murang'a South Water and Sanitation Company Limited (MUWASCO).
10. Whereas I agree with the submissions made on behalf of the applicant's that they have a statutory and constitutional right to be admitted to bond or bail on reasonable conditions pending their trial, I also agree with the submissions made on behalf of the respondent that in determining bond terms, the court should be guided by among other factors, the nature and seriousness of the offence and the subject matter of the charges.



Since no two cases are alike in terms of their facts and circumstances, in exercising its discretion when setting bond terms, the trial court must bear in mind the facts and circumstances peculiar to each case and the personal circumstances of the accused person.

11. In this case, the trial court's record shows that when setting the initial bond terms, the court did not give any reason to justify its decision to admit the applicants to a cash bail of Kshs 1,200,000 and when revising the bond terms on 1st April 2024, although the court had the benefit of pre-bail reports filed in respect of each of the applicants, it failed to take into account the personal circumstances of the applicants including their economic status as indicated in the pre-bail reports. The court appears to have given prominence to the economic ramifications of the acts constituting the offence facing the applicants. This in my view was an error on the learned trial magistrates part because she ought to have interrogated and considered all the material that was placed before her including the content of the pre- bail reports. As correctly submitted by the applicant's counsel, there was no need of fixing bail terms which were unaffordable to the accused persons as this was tantamount to indirectly denying them their right to bail or bond pending trial.

12. The overarching consideration in deciding whether or not to grant bond or bail pending trial is whether the accused was going to attend his or her trial from beginning to end or whether the accused was likely to abscond.

In setting bond or bail terms, the court usually imposes conditions aimed at ensuring accused's attendance during the trial and where appropriate, additional conditions aimed at ensuring that the integrity and fairness of the trial process was safeguarded.

13. In this case, the pre- bail reports show that the applicants have fixed places of abode where they live with their respective families. Their ages range from 25 to 52 years.

Apart from the 4th applicant who reportedly works in a bank in an undisclosed capacity, the other applicants are either subsistence farmers or boda boda operators. The common thread running through all the pre-bail reports is that the applicants were struggling to earn a living.

14. That said, I have taken into account the charges facing the applicants, the value of the subject matter and the views expressed by the representative of the victim of the offence (the company). I have noted the position taken by the company that the applicant's bond terms should not be reviewed so that they can serve as a deterrence to members of their community. It is important to remember that all accused persons including the applicants in this case enjoy the constitutional right of being presumed innocent until proven guilty. The position taken by the company is unacceptable as it is perilously close to adjudging the applicants guilty before they were subjected to the trial process.

15. Having taken all relevant factors in this case into account, I find that the application has met the threshold of revision as envisaged in Section 362 of the *Criminal Procedure Code*. I accordingly allow the application on terms that the bail and bond terms granted by the trial court are set aside. They are substituted with orders of this court granting each applicant a personal bond of Kshs 500,000 together with two contact persons whose obligation will be to ensure that the applicants attend the trial court whenever required. The contact persons who preferably should be members of the applicants nuclear or extended family shall be approved by the trial court.

16. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 9TH DAY OF APRIL, 2025.

HON. C. W. GITHUA



JUDGE

In the Presence of:

No appearance for the applicants

Mr. Mwangi Nduati, Mr. Mwika & Mr. Matu for the Applicants

Ms Muriu for the Respondent

Ms Susan Waiganjo, Court Assistant

