



**Musiomi v Republic (Miscellaneous Application E113 of 2024)
[2025] KEHC 4376 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4376 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION E113 OF 2024
RN NYAKUNDI, J
APRIL 4, 2025**

BETWEEN

MAXWELL MUSIOMI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein contends that he was denied the right to bail as guaranteed under Art. 49(h) without cogent reason. He argues that the honorable court has powers vested under section 362, 363, and 364 of the CPC to examine the lower court record to satisfy itself to the legality, correctness or propriety of any findings.
2. In the affidavit supporting the prayers, he deposed that he was charged with the offence of defilement contrary to section 8(1) as read with 8(3) of the *Penal Code*. That the court be pleased to review the orders of the trial court and allow the applicant bail pending hearing and determination.
3. Upon careful review of the materials placed before this Court, I am satisfied that the matter warrants further consideration by the trial court. While the gravity of the alleged offense is significant, the constitutional right to bail remains paramount unless compelling reasons exist to deny it. The record does not clearly establish whether the learned magistrate fully considered all relevant factors including the applicant's circumstances, potential flight risk, and the protection of alleged victims.
4. Therefore, in the interest of justice and proper exercise of judicial discretion, this matter is hereby remitted back to the trial court magistrate with directions to conduct a comprehensive review of the bail application. The magistrate, being more conversant with the specific circumstances surrounding the alleged offense and having the benefit of first-hand interaction with the parties, is better positioned to make a determination that balances the rights of the accused with public interest considerations. The application for review therefore lacks merit and is hereby dismissed.



5. It is so ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 4TH DAY OF APRIL 2025.

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R. NYAKUNDI

JUDGE

