



**Ogwari v Republic (Miscellaneous Criminal Application
E123 of 2025) [2025] KEHC 11150 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11150 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E123 OF 2025**

**DR KAVEDZA, J
JULY 28, 2025**

BETWEEN

CLINTON OTIENO OGWARI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant is charged before the subordinate court with the offence of grievous harm contrary to section 234 of the Penal Code. Before the trial court, he applied and was admitted to a bond of Kshs. 80,000 with a surety of a similar amount. In the alternative, he was granted a cash bail of Kshs. 80,000.
2. He filed the present application seeking revision of the bond terms. He prayed that this court review the bail terms downwards to Kshs. 50,000 which he can afford. The application is premised on the grounds on the face thereof and supported by his affidavit. The averments made are that he is the sole breadwinner in a family. The bail terms set by the court are too stringent. He is ready and willing to abide by the terms set by the court.
3. The constitution specifically requires under Article 49 (h) of the Constitution that the terms of bail to be attached to an accused who is released on bail shall be reasonable. Besides the exceptions limiting the right to bail under section 123A of the Criminal Procedure Code, Article 49 (h) of the Constitution places the burden of proof on the state to demonstrate compelling reasons.
4. In determining whether to grant bail, the court is constitutionally obliged to ensure that the bail or bond terms imposed are reasonable. This means that the terms must not be so high or burdensome as to defeat the very right to liberty enshrined under Article 49(1)(h) of the Constitution and reinforced under the Criminal Procedure Code. The primary purpose of bail is to secure the attendance of the accused at trial, and the terms imposed should be no more than what is necessary to achieve that objective. Where the conditions are disproportionately high relative to the offence or the circumstances



of the accused, such bail effectively becomes a denial of liberty. The court in *Taiko Kitende Muinya v Republic* [2010] eKLR emphasised that bail should not be used as a form of anticipatory punishment before conviction.

5. At the same time, the court must guard against setting bail or bond terms so low that they lose their deterrent effect and make it easier for the accused to abscond. Bail must be sufficient to bind the accused to attend court, taking into account the nature of the offence, the penalty provided by law, and the personal circumstances of the accused.
6. In the present matter, the accused is charged with the offence of grievous harm, contrary to section 234 of the [Penal Code](#), a serious offence that attracts a significant custodial sentence upon conviction. The nature of this offence justifies stricter terms of bail or bond.
7. Upon evaluation, I find that the bond terms imposed by the trial magistrate were proportionate, fair, and within the bounds of judicial discretion. They were neither harsh nor excessive.
8. The upshot of the foregoing analysis is that the application for review of bail terms lacks merit and is hereby dismissed.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF JULY 2025.

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D. KAVEDZA

JUDGE

