



**Republic v Kinavusege (Criminal Case 39 of 2021)
[2025] KEHC 12807 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12807 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 39 OF 2021
JN KAMAU, J
SEPTEMBER 17, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

LEONARD MAYODI KINAVUSEGE ACCUSED

RULING

1. In his Notice of Motion application dated and filed on 10th December 2024, the Accused person herein sought an order of reinstatement of his bond and bail terms and that he be granted a bond of at least Kshs 300,000/= or a cash bail of at least Kshs 100,000/= in line with his economic status and the current economic devastation brought by the current national economic hardships. He pointed out that he was willing to abide by any other condition that might be ordered including availing two (2) close contact persons if need be.
2. His advocate, Charles Anyanga Malalah, swore an Affidavit in support of the said application on 9th December 2024.
3. Through his advocate, he averred that on 21st March 2023, this court issued a warrant of arrest against him after the Prosecutor, one Ms Gakumo made detailed submissions to court as to why he was not in court that day.
4. He contended that there was no evidence that he had been informed of the impending court date and that he had remained in the dark and did not know of any subsequent court dates. He asserted that the Prosecutor’s prayer was more confusing as she did not place proper facts before the court prior to making the orders issuing warrant of arrest against him. He was categorical that it was illegal, unfair, unjust, an abuse of discretion and manifestation of injustice for the court to cancel his bond under such confusion and lack of clarity. He argued that the court would not have issued order of arrest if it had the benefit of all the important information about him.



5. He asserted that he was erroneously detained in prison contrary to the presumption of innocence unless one was proven guilty. He averred that he was detained with convicts and other criminal deviants whereas he was to be presumed innocent unless proven guilty. He added that holding him in remand in his current health condition was a nearly premature death sentence because he was perennially sick with chronic anaemia, pneumonia, meningitis, HIV and other related health complications.
6. He pointed out that he had attended Ganjoni Hospital in Mombasa on 18th March 2023, 20th May 2023 and 10th June 2024 and that he was a big risk to other remandees for him to be kept with them without proper medical treatment. He added that he had been in and out of hospital in the same period he was required to attend court and therefore did not know on which dates he was supposed to attend court.
7. He contended that he was in remand without access to proper medicines which he needed for his survival and the specialised treatment that he required was not available at Kakamega GK Prison where he was being held. He added that he was a father to two (2) children, Melvin Kamonya and Laviny Kasoha who needed his parental care.
8. He asserted that he was in remand when his relatives arranged for his surety and that if that turned out faulty, it was not his fault. He argued that be that as it may, surety could be substituted pursuant to the court's requirement. He thus urged this court to reinstate his bond terms.
9. In opposition to the present application Faith Koech, Prosecution Counsel, swore a Replying Affidavit on 18th June 2025,. She explained that this matter was initially before the High Court in Kakamega where the Accused person had been granted bond and that on 8th February 2022, the matter was transferred to the High Court in Vihiga in his presence and that of his counsel and the then Prosecution.
10. The Prosecution stated that a scrutiny of the Court File herein revealed that on 17th October 2023, neither the Accused person nor his surety attended court. It added that on the same day, the Investigating Officer, No 95159 PC Yusuf Osman, informed court that he was unable to get the person who had stood surety for the Accused person since he had tendered fake security documents whereupon the court issued a warrant of arrest against the Accused person.
11. It contended that when the matter came up again on 20th February 2024, both the Accused person and his Surety were not in attendance. The court extended the warrant of arrest against the Accused person and issued a warrant of arrest against the Surety who had never appeared before the court. It pointed out that the matter had come up in court several times but that the Accused person never attended court until when he was apprehended.
12. It stated that while it was not in contention that the bond/bail was a constitutional right, it could be denied where there were compelling reasons for such denial. It asserted that the Accused person had not demonstrated any peculiar and exceptional circumstances to warrant him being granted the orders he had sought.
13. The Accused person's Written Submissions were dated and filed on 18th February 2025 while those of the Respondent were dated 18th June 2025 and filed on 19th June 2025. The Ruling herein is based on the said Written Submissions which both parties relied on in their entirety.

LEGAL ANALYSIS

14. The Accused person invoked Article 49(1)(h) of *the Constitution* of Kenya, 2010 and admitted that the right to bail was not absolute and where there were compelling reasons, the right could be restricted. He argued that because *the Constitution* expressly conferred the said right, it was upon the prosecution



- to show that there existed compelling reasons to deny an accused person bail. He added that the compelling reasons depended on the circumstances of each case and that those circumstances were to be considered cumulatively and not in isolation.
15. He placed reliance on the cases of *Republic vs William Mwangi Wa Mwangi*[2014]eKLR where it was held that in the event that the state was opposed to the grant of bail to an accused person, it had the onus of demonstrating that compelling reasons existed to justify denial of the constitutional right to bail and *Republic vs Joktan Mayende & 4 Others* Bungoma High Court Criminal Case No 55 of 2009 (eKLR citation not given) where it was held that 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.
 16. He was emphatic that there was no compelling reason advanced to court by the Prosecution to warrant revocation of the Accused person's bond and his arrest. He further cited the case of *Abdalla Mutembei Gisaga vs Government (sic)*[2021]eKLR where the court reinstated the accused's bond on grounds that his medical treatment notes were authentic.
 17. He further referred to the cases of *Republic vs Danford Kabage Mwangi*[2016]eKLR and *Nganga vs Republic*(1985)KLR 451 where the common thread was that granting bail entailed the striking of a balance of proportionality in considering the rights to the applicant who was presumed innocent on one hand and the public interest on the other hand.
 18. He asserted that he attended court on at least twelve (12) days when six (6) witnesses already testified. He argued that if he had wanted to abscond, then he would have either moved to a different place or town but that he had no such reason to run away from the courts.
 19. He asserted that there was plenty of confusion in the transition of court cases and files from Kakamega High Court to Vihiga High Court and that initially Judges from Kakamega High Court took turns to go to Vihiga High Court after it was confirmed with the High Court status minus a resident Judge, thus, on many occasions Judges from Kakamega High Court did not travel to Vihiga and heard matters slated for Vihiga High Court from Kakamega High Court. He contended that this left accused persons confused as to where their cases would be heard.
 20. He was emphatic that he was not absconding court and that he was only faced with logistical challenges originating from the courts. He blamed his previous advocate for failure to inform him of the dates to attend court. He termed him as indolent and irresponsible.
 21. He expressed willingness to accept any conditions that may be set by the court in order to reinstate his bond terms. He stated that the court dates were far and that he would be held in custody for an unnecessarily long time while he waited for the testimony of the two (2) remaining witnesses.
 22. He urged the court to reinstate his bond so he could take care of his family and also on account of his poor health and the need for admission in hospital over long periods. He promised to attend court on all dates and argued that he had retained a new Advocate who would undertake to ensure that he did not abscond.
 23. The Respondent agreed with the Accused person's submissions regarding when bond could be denied. It asserted that when reinstating bond terms for absconding, the court had to consider amongst other reasons, the nature of the offence, the number of times the accused person had absconded, the reasons for absconding, the character of the accused person and the stage of the trial.
 24. It submitted that the more serious the offence, the greater the incentive to jump bail. It argued that as this was a murder case with a penalty of death sentence, bond was granted on the undertaking



that an accused person would attend court. However, when that undertaking was breached, then the foundation for bond/bail was destroyed and there could not be a basis for reinstatement. It was emphatic that the Accused person herein absconded and was arrested outside the jurisdiction of this court. It was emphatic that the Accused person knew that the matter was being handled at Vihiga and should have ensured he followed up to know the date when the case was fixed.

25. It relied on the cases of Republic vs Danson Mgunya & Another[2010]eKLR where it was held that the primary criterion for grant of bond/bail was availability of the accused to stand trial and Samwel Muthaura vs Republic[2020]eKLR where the court therein denied the accused bond who had absconded for two (2) months and only attended court only after he was arrested by police rendering the reinstating of his bond unjustifiable as absconding was a compelling reason because his attendance in court was not guaranteed.
26. It further relied on the case of Jonathan Batita & Another vs Republic[2017]eKLR where the plea for reinstatement was rejected where the accused persons absconded court and when they were arrested they claimed to have been unwell. The court was not persuaded as the accused persons were not able to explain why they did not attend court once their health improved.
27. It submitted that the Accused person herein absconded for about three (3) years and was arrested by police officers at Mombasa and, therefore, his attendance of court was not guaranteed. It argued that the treatment notes he attached did not show that he was admitted in hospital the entire time he never attended court and that he should have followed up on his case when he was of good health. It was its case that that, therefore, was not a reasonable ground for reinstatement of bond terms.
28. It was categorical that the trial was at the tail end as most of the Prosecution witnesses had already testified against the Accused person hence there was a likelihood of a temptation of him absconding. It added that his conduct and general character of not following up on the case showed no commitment to appearing for trial if bond was reinstated and hence, it had demonstrated compelling reasons to deny the Accused person reinstatement of bond terms.
29. It was emphatic that the right to bail was not absolute and that the courts could impose reasonable conditions or deny bond altogether and ensure proper administration of justice.
30. In determining whether to grant an accused person bail/bond terms the court is guided by inter alia, Article 49 (1) (h) of *the Constitution* of Kenya, 2010 that states that:-

“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released (emphasis court).”
31. Article 50 (2) (a) of *the Constitution* of Kenya further stipulates that:-

“(2) Every accused person has the right to a fair trial, which includes the right to be presumed innocent until the contrary is proved.”
32. In addition, Section 123 of the Criminal Procedure Code Cap 75 (Laws of Kenya) empowers the court to admit an accused person to bond or bail on reasonable terms.
33. Finally, Paragraph 4.9 of the Kenya Bail and Bond Policy Judiciary Guidelines provides the factors to be considered by the court when deciding with whether to grant or deny bail/bond and which includes:-
 - a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.



- b. The strength of the prosecution case.
 - c. Character and antecedents of the accused person.
 - d. The failure of the accused person to observe bail or bond terms
 - e. Likelihood of interfering with witnesses.
 - f. The need to protect the victim or victims of the crime from the accused person.
 - g. The relationship between the accused person and potential witnesses.
 - h. Child offenders. Where the accused person is a minor, the denial of bail or bond is considered not to be in the best interests of the accused person, who is a minor.
 - i. The accused person is a flight risk.
 - j. Whether accused person is gainfully employed.
 - k. Public order, peace or security. Whether the release of an accused person will disturb public order or undermine public peace or security.
 - l. Protection of the accused person. Whether pre-trial detention is necessary to protect the accused person.
34. While dealing with the issue of bail and/or bond, this court had due regard to the case of Michael Juma Oyamo & Another vs Republic [2019]eKLR where the Court of Appeal reaffirmed that such constitutional right could only be limited if the prosecution satisfied the court that there were compelling grounds to warrant denial of bail/bond to an accused person.
35. This court associated itself with the holding in Republics vs Joktan Malende and 3 Others (Supra) where it was held that compelling reasons included the likelihood of an accused person failing to attend court, committing or abetting the commission of, a serious offence, endangering the safety of victims, individuals or the public, interfering with witnesses or evidence, endangering national security or public safety, and where it was necessary, it could be denied to protect an accused person.
36. Pursuant to the aforesaid legal principles, this court considered the Accused person's application and noted from the record that after taking plea on 7th February 2019, the court granted him bond of Kshs 500,000/= with one (1) surety of similar amount as envisaged under Article 49 and 50 of *the Constitution* of Kenya, and the other statutory and/or legal authorities quoted herein. He was released on bond on 27th June 2019.
37. He was present on 23rd October 2019 and on 11th December 2019 when the matter proceeded for hearing and five (5) prosecution witnesses testified. On 22nd July 2020, he did not attend court. His counsel informed this court that he was not aware the matter was coming up on the said date whereupon the court gave a further hearing date.
38. On 22nd October 2020, the Accused person did not attend court and a warrant of arrest was issued. On 24th March 2021, he was present in court and his Advocate pleaded with court to lift the warrant of arrest on the ground that he had not been contacted and/or informed of the date to attend court. The Accused person subsequently attended court on 20th May 2021 and 18th October 2021 but his advocate was not present occasioning an adjournment. On 3rd October 2022, the Accused person herein attended court and the sixth (6th) Prosecution witness testified.



39. The Accused person last appeared in court on 6th December 2022. He was arrested on 31st November 2024. This was a period of one (1) year, eleven (11) months and twenty-five (25) days, an inordinately long period of time. This court perused the medical documents he submitted to the court but there was no proof that he was unwell for the entire period he did not attend court. Additionally, he did not prove that he was unwell on the specific dates that he did not attend court. He was arrested by the Police and brought before the court.
40. Notably, the matter herein was at an advanced stage and the interest of justice demanded that it be concluded expeditiously. Justice was a double-edged sword. The victim was entitled to a speedy trial just as the accused was. This matter had been pending in court since 4th February 2019 and therefore ought to be disposed of.
41. It was evident that the Accused person had absconded court for close to two (2) years. The Prosecution had proved that there were compelling reasons not to reinstate the bail/bond the Accused person had initially been granted.

DISPOSITION

42. For the foregoing reasons, the upshot of this court's view was that the Accused person's Notice of Motion Application dated and filed on 10th December 2024 was not merited and the same be and is hereby dismissed.
43. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 17TH DAY OF SEPTEMBER 2025

J. KAMAU

JUDGE

