



REPUBLIC OF KENYA



KENYA LAW
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**Akinyi v Respondent (Criminal Revision 50 of 2023)
[2024] KEHC 1415 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 50 OF 2023
DR KAVEDZA, J
FEBRUARY 16, 2024**

BETWEEN

JOYCE AKINYI APPLICANT

AND

RESPONDENT RESPONDENT

(Being an application for revision of the orders issued by Hon. N. Thuku (SPM) on 13th April 2023 at JKIA Chief Magistrate's Court Criminal case no. 121 of 2019 Republic vs Joyce Akinyi & 2 others)

RULING

1. The applicant filed the notice of motion dated 20th April 2023, seeking a revision of the orders issued by the trial court on 13th April 2023, revoking the applicant's bail. The application is supported by an affidavit sworn by the applicant's advocate on an even date.
2. The averments made in support of the application are that on 11th September 2019, the applicant was granted a cash bail of Kshs. 1,000,000. In addition, she was to provide two contacts who were to pay a similar amount to the court and also report to the DCI. Being aggrieved, the applicant moved to this court, and on 10th December Ngenye J (as she then was) reviewed the bond terms.
3. The new terms were that the applicant was required to report to the DCI every fortnight and inform the investigating officer if she intended to leave the jurisdiction of the court. She maintains that on 6th April 2023, she made a routine report to the Officer In Charge of the Anti-Narcotics Unit who signed a document confirming the same. She also informed them of her intention to travel to Uganda in line with her bail terms. On 12th April 2023, she was arrested on her way to Uganda at the Busia Immigration Border. On 13th April 2023, she was arraigned before the trial court, and her bail terms were revoked.



4. The applicant asserts that she has never absconded throughout her trial. In addition, she is a single mother of four children, one of whom is mentally incapacitated and has no reason to flee the country. Furthermore, no warrants of arrest had been issued pursuant to her arrest. She urged the court to reinstate her bail.
5. The respondent did not file a response to the application.
6. The application was canvassed by way of written submissions which have been duly considered. The issue for determination is whether this court should grant the revisionary orders sought.
7. Section 362 of the Criminal Procedure Code which has been invoked by the Applicant empowers this court to call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality, or propriety of any finding or order recorded and the regularity of any proceedings of any such subordinate court. The actions that this court can take when exercising its revisionary jurisdiction are provided for under Section 364 of the Criminal Procedure Code.
8. Be that as it may, this application is founded on bail or bond and therefore, article 49(1) (h) of the Constitution as well as Section 123 of the Criminal Procedure Code are relevant. Section 123 A specifically provides;

“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 in particular nature and seriousness of the offence, the character, antecedents, association, and community ties of the accused person the defendants record in respect of the fulfillment of obligations under previous grants of bail the strength of the chance of his having committed the offence.”
9. I have examined the record of the trial court. I note that the prosecution made an application for the cancellation of bond on the ground that the Applicant herein was arrested while attempting to flee the jurisdiction of the court. In the ruling delivered by Hon. N. Thuku, the learned magistrate, made an inquiry into the circumstances under which the applicant was arrested. However, she did not make an inquiry into the fundamental issue as to whether the applicant was in the process of absconding and therefore in violation of her bond terms. It was not enough for the court to find that there was a likelihood of the applicant fleeing the jurisdiction of the court without determining if it was a pre-condition for the grant of bail that she did not leave the jurisdiction of the court.
10. From the record, one of the conditions for the grant of bail was that the applicant was required to inform the investigating officer before she left the jurisdiction of the court. The evidence that she reported the same was not refuted. In addition, the applicant had not absconded court before her arrest as her court date was not due. As such there was no evidence that the applicant failed to abide by the term of bail/bond set by the court. I therefore find that it was in error for the trial court to cancel the bond terms of the Applicant on that account.
11. The upshot is that the notice of motion dated 20th April 2023 is merited. Accordingly, I hereby set aside the order of the trial court made on 13th April 2023, and reinstate the bond terms granted earlier. The Applicant is however cautioned to strictly adhere to the conditions set by the court.

It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 16TH DAY OF FEBRUARY 2024

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D. KAVEDZA

JUDGE

In the presence of:

Ms. Njeru h/b for Onesmus Githinji for the Applicant

Mr. Mong'are for the Respondent

Court Assistants: Joy/Omwoyo

