



**Kainga & 4 others v Republic (Miscellaneous Criminal Application
E004 of 2024) [2024] KEHC 1018 (KLR) (6 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1018 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CRIMINAL APPLICATION E004 OF 2024
EM MURIITHI, J
FEBRUARY 6, 2024**

BETWEEN

**JOHN KAINGA 1ST APPLICANT
ANDREW M'MUKIRI 2ND APPLICANT
MARK MURIRA 3RD APPLICANT
CHARLES KINYUA 4TH APPLICANT
PHINEAS THURANIRA 5TH APPLICANT**

AND

REPUBLIC RESPONDENT

RULING

1. By a Notice of Motion dated 11/1/2024 pursuant to section 123 (2) and (3) of the [Criminal Procedure Code](#), the applicants seek that, "This honorable court be pleased to reduce the bail/bond imposed by the Maua Chief Magistrate's court on the 2nd day of January 2024 in Maua CM'S Court Criminal Case No. E002 of 2023."
2. The application is premised on the grounds on the face of it and the supported by an affidavit sworn by John Kainga, the 1st applicant on even date. He avers that on 2/1/2024, he was arraigned before Hon. K. Muchiri Senior Resident Magistrate where he was charged with arson and malicious damage to property. The trial court admitted him to a bond of Kshs. 300,000/= with a surety of a like amount or a cash bail of Kshs. 100,000/=. He is unable to raise the excessive bail amount which seems to be an approximation of the alleged value of the subject matter. He is advised that the terms of bond should be tailored to secure the attendance of the accused in court for purposes of his trial and not an approximation of the value of the subject matter of the criminal charge. He is a family man and a farmer-cum-businessman at Laare in Igembe North Sub-County and therefore not a flight risk. He



pleads with the court to review the cash bail to Kshs. 20,000/= and he commits to attend his trial without fail.

3. The respondent opposed the application vide grounds of opposition that, “The purpose of bail and bond terms is to ensure the Applicants attends the trial; The provisions of section 123A of the [Criminal Procedure Code](#) provides the relevant circumstances to be considered including: nature and seriousness of the offence, character of the accused, record of compliance with previous bail and bond terms and strength of the evidence to be adduced; The bail conditions set by the trial court was reasonable, proportionate to the offences facing the Applicants’; The Applicants’ bail and bond terms were set in court on January 2, 2024 and as such there are no changed circumstances to warrant a review of the same; The trial court in granting bail and bond terms did not take into consideration extraneous matters to the detriment of the Applicants’; The application lacks merit and pray that it be dismissed accordingly.”
4. Counsel for the applicant and the DPP made oral submissions on the application and ruling was reserved.

Analysis and Determination

5. Section 123 of the [Criminal Procedure Code](#) provides that:

“(1) When a person, other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail: Provided that the officer or court may, instead of taking bail from the person, release him on his executing a bond without sureties for his appearance as provided hereafter in this Part. (2) The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive. (3) The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.”

6. In considering whether to review a trial court’s decision on bail in terms of section 123 (3) of the [Criminal Procedure Code](#), the Court must be satisfied that the decision of the trial court is plainly wrong or, the trial court misdirected itself in failing to take into account a material factor or taking into account an immaterial factor which has resulted in a miscarriage of justice. (See *Mbogo v. Shah* (1968) EA 93).
7. The right to reasonable bail and bond terms is underpinned in the Judiciary’s [Bail and Bond Policy Guidelines](#) as follows:

“Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.”



8. This court in *Cyril Kipruto Serem v Republic* [2020] eKLR, rendered thus:

“The amount of bail or bond is not supposed to be an approximation of the value of the subject matter of the criminal charge. It does not follow that the higher the value of the property subject of the trial the higher the bail bond terms. It is with respect faulty reasoning because, were it so, those poor offenders on charges, for example, of destruction or attempted fraudulent obtaining, of property of high value would never secure hefty bail and bond terms imposed. Terms of bond are not meant to punish the accused for any perceived guilt for the charges leveled against him. Nor are the terms meant to ensure he is detained awaiting trial to avoid his escape or to ensure punishment. Terms of bail or bond should be tailored to secure and ensure the attendance in court of the accused for purpose of his trial. If the case meets the criteria for grant of bail in that there are no compelling reasons to deny bail, then the conditions for bail must be such as the accused in the particular case is able to meet. So that grant of bail is not a backdoor denial of liberty contrary to, and in mockery of, article 49 (1) (h) of the *Constitution*. The accused is innocent until proved guilty and he is entitled to the article 25 fair trial protections afforded an accused under the *Constitution*.”

9. As accurately urged by the applicants’ counsel, the purpose of bail is to ensure that the applicants attend court whenever required to do so by the court.
10. Excessive bail/bond terms are tantamount to denial of bail altogether because the Applicants will not be able to raise the cash bail after all, and therefore they will remain incarcerated despite having been admitted to bail.
11. The discretion of the trial court in imposing bail terms for accused persons before it is accepted, but the same is subject to the statutory review provisions of section 123 of the Criminal Procedure Code and the revisionary jurisdiction of section 364 of the Criminal Procedure Code, as well as the general supervisory jurisdiction of the High Court under article 165 (6) and (7) of *Constitution*.
12. The court considers that the usual bail/bond terms before the High Court here are usually set in the range of Kshs 200,000/= - Kshs.500,000/=, with one surety for accused persons facing murder charges, and thus the bail terms set by the trial court for the applicants who are facing arson and malicious damage to property, were on the higher side, as to amount to denial of bail. It must always be remembered that the monetary term of bail/bond is not an approximation of the value of the subject matter but only a security for the attendance of the accused for his trial.

Orders

13. Accordingly, for the reasons set out above, the applicants’ bail and bond terms are reviewed as follows:
 1. The order for cash bail of Kshs. 100,000/= or a bond of Kshs. 300,000/= with 1 surety of a similar amount imposed on the applicants by the trial court is set aside.
 2. The applicants shall each execute a bond of Kshs. 100,000/= with 1 surety of a similar amount; or deposit the sum of Kshs. 50,000/= as cash bail.

Order accordingly.

DATED AND DELIVERED THIS 6TH DAY OF FEBRUARY, 2024.

EDWARD M. MURIITHI

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

Appearances:

Mr. Nkunja for Accused.

Mr. Masila Principal Prosecution Counsel for the DPP.

