



REPUBLIC OF KENYA



**Piranyang v Republic (Criminal Revision E006 of 2024)
[2024] KEHC 2642 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E006 OF 2024
RB NGETICH, J
MARCH 13, 2024**

BETWEEN

LONYANGAPAT KOMOLE PIRANYANG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with four counts of offences. Count I is the offence of being in possession of a fire arm without licence contrary to section 4A [1] [a] as read with sub section [2][a] of the *Firearms Act* Cap 114 Laws of Kenya. The particulars of the charge was that the accused on the 15th day of November, 2023 at Adoket Adome village, Silale Location in Tiaty West Sub-County within Baringo County was found in possession of a fire arm namely AK 47 Serial Number 5C2752 without a licence or permit or other lawful justification from a licensing officer.
2. Count II is the offence of being in possession of a fire arm without licence contrary to section 4a(1) (a) as read with sub section (2)(a) of the *firearms act* cap 114 laws of Kenya. Particulars of the offence being that the accused on the 15th day of November, 2023 at Adoket Adome Village, Silale Location in Tiaty West Sub -County within Baringo County, was found in possession of a fire arm namely AK 47 Serial Number 3979 without a licence or permit or other lawful justification from a licensing officer.
3. Count III is the offence of being in possession of ammunitions without a fire arm certificate contrary to section 4(1) as read with sub section (3)(a) of the *firearms act* cap 114 laws of Kenya. The particulars of the offence are that on the 15th day of November, 2023 at Adoket Adome Village, Silale Location in Tiaty West Sub -County within Baringo County, the accused was found in possession of ten (10) rounds of ammunition of 7.62 x 39mm caliber in a magazine attached to an AK 47 Serial Number 5c275 without a fire arm license.



4. Count IV is the offence of being in possession of ammunitions without a fire arm certificate contrary to section 4(1) as read with sub section (3)(a) of the [firearms act](#) cap 114 laws of Kenya. The particulars of the offence are that on the 15th day of November, 2023 at Adoket Adome Village, Silale Location in Tiaty West Sub -County within Baringo County, the accused was found in possession of five (5) rounds of ammunition of 7.62 x 39mm caliber in a magazine attached to an AK 47 Serial Number 3979 without a fire arm license.
5. The Applicant pleaded not guilty to the charges and the prosecution raised objection to bond as per the affidavit of the investigations officer sworn and filed. On the 28th November, 2023, the trial court rendered a ruling and indicated that having considered the pre-bail report and noting the recommendations thereon, the accused is not suitable to be released on bond at this stage. That the ground is hostile and there are uncertainties as to accused's place of abode. The court ordered that the accused remain in custody pending hearing of the matter.
6. The Applicant has approached this court through an application dated 23rd January, 2024 brought under section 123 (1) of the [Criminal Procedure Code](#). Article 49 (1) h of [the Constitution](#) of Kenya and all other enabling provisions of the law for the accused person shall be heard for orders:-
 - i. That the trial Magistrates court's decision to deny the applicant bond be nullified.
 - ii. That the Honorable Court be pleased to admit the applicant/Appellant herein on favourable Bail/Bond terms pending hearing and determination of Criminal Case No. E135 of 2023.
 - iii. Costs of this application be on cause.
7. The application is based on the following grounds: -
 - a. That the applicant was denied bond on unreasonable and un compelling grounds.
 - b. That the accused applicant was charged with the offence of being in possession of firearms and ammunitions on 16/11/2023 before the Magistrate's Court.
 - c. That the learned magistrate relied entirely on the pre bail report to render her ruling.
 - d. That the pre bail report was never interrogated on its truthfulness and contradictions on the face of it.
 - e. That the applicant shall abide by any condition given if this application is allowed.
8. When the matter came up for hearing on the 14th day of December 2024, the state counsel Ms. Ratemo submitted that they rely on the affidavit sworn by the Investigations officer on the 16th November 2023 where he stated that the applicant was a flight risk as he does not have a fixed abode and tracing him will be difficult.
9. She submitted that the applicant is charged with a serious offence of being in possession of fire arm and ammunition which is an offence that this county is struggling with and the accused is a wanted criminal in the neighboring counties and upon his arrest, the applicant did not have an identity card to confirm his true identity and the issues raised by the investigations officer are issues that cannot be wished away.
10. In a rejoinder, the defence counsel Mr. Kipkulei submitted that in response to the argument that the applicant has no fixed abode, the accused lives in Tiaty and is a Kenyan citizen with fixed place of abode and is innocent until proven guilty and the offence committed is not a compelling reason for the Applicant to be denied bond.



11. He further submitted that he agrees that security issue is a menace in Baringo County, but court should not exercise discretion to deny accused bond because he is from pokot ethnic community. He argues that they are aware that there is ongoing operation ongoing in Tiaty which is occupied by the Pokot and it will be a challenge granting bond to members of Pokot community as most of them are termed as nomads which was captured by the probation officer. That the reason for denial of bond was that the applicant was a nomad and submitted that all the information in the affidavit by the investigations officer were concocted and the same is not true; that some are unfounded allegations and not truthful more specifically paragraph 6.
12. He submitted that the accused lives in Tiaty and is married to 3 wives and on the issue of the identity of the accused, the investigations officer did not prove that the accused did not have an identity Card. On the issue of having difficulty in tracing the applicant, counsel submitted that the Applicant does not control the police operations and each should be treated independently and on its own merit. He urged court to allow the application.

Determination

13. Article 165 (6) gives the High Court Supervisory Powers over subordinate court. In line with Constitution provision, section 362 of Criminal Procedure Code empowers the High Court to call for lower court record and examine for purposes of satisfying itself on its corrective legality or propriety any finding, sentence or order recorded or passed.
14. Under Article 49(1)(h) of *the Constitution*, an accused person has a 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.
15. Further under Article 50(2) of *the Constitution*, every accused person is entitled to the presumption of innocence. The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management thus accused persons should not be subject to the same rules and regulations as convicts.
16. Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, provide that Subject to Article 49(1)(h) of *the Constitution*, the Court shall have regard to all the relevant circumstances and in particular—
 - (a) the nature or seriousness of the offence;
 - (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of his having committed the offence;
 - (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
 - a. has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - b. should be kept in custody for his own protection.



17. And Bail and Bond Policy Guidelines, it is restated as a general guideline in Paragraph 4.9 that in terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of *the Constitution* of 2010 is determining the existence of compelling reasons to warrant denying an accused person bail, particularly in serious offences.
18. The guideline further give non-exhaustive factors for consideration in bail applications as hereunder:-
 - 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. The character and antecedents of the accused person.
 - d. The failure of the accused person to observe bail or bond terms.
 - e. The likelihood of interfering with witnesses.
 - f. The need to protect the victim or victims of the crime.
 - g. The relationship between the accused person and the potential witnesses.
 - h. The best interest of child offenders.
 - i. The accused person is a flight risk.
 - j. Whether the accused person is gainfully employed.
 - k. Public order, peace and security.
 - l. Protection of the accused persons.
19. There is no doubt that the applicant is still innocent until proven guilty as provided by article 50 (2) of *the constitution*. He should not therefore be treated like a convict and of importance is to ensure that accused attends court when required. However, the issue of court attendance cannot be considered in isolation, the above listed factors have to be considered while considering whether there are compelling reasons to deny accused bond. The investigating officer has indicated that accused is a flight risk. It has not been disputed that the accused is a nomad. That in essence mean he cannot be found in one place when required. In the event of accused's failure to attend court, the police may experience challenge in locating him and in the process delay hearing of this case.
20. Public order, peace and security is also a factor to be considered by court while determining application for bond. It is not disputed that the applicant was arrested in Tiaty an area under security operation due to conflict between two communities. The applicant has been charged with two counts of being in possession of firearms and from investigating officer's affidavit he is a wanted person in the neighboring counties. In my view security concern is a compelling reason to deny accused bond.
21. From the foregoing, I do not see any reason to fault the trial magistrate's decision to deny the applicant bond. I therefore see no merit in the application herein and proceed to dismiss but direct that hearing proceed on priority basis.
22. Final Orders: -
 1. Application for revision dated 23/1/2024 is hereby dismissed.
 2. Hearing of the trial court matter to proceed on priority basis.



RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 13TH DAY OF MARCH 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kipkulei for Applicant.

Applicant present.

Ms Ratemo for State.

Elvis/Sitienei – Court Assistants.

