



**Jumbale v Republic (Miscellaneous Criminal Application
E027 of 2024) [2024] KEHC 4206 (KLR) (3 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4206 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E027 OF 2024**

G MUTAI, J

APRIL 3, 2024

BETWEEN

SAMUEL JUMBALE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. In a ruling delivered on 13th February 2024, the Hon L N Juma, PM, of Shanzu Chief Magistrate's Court, granted the Applicant, inter alia, the following bail/bond terms: Bond of Kes.2,000,000/- with 3 sureties of similar amount;
2. The Applicant was charged with the offence of robbery with Violence in Shanzu Chief Magistrate's Court Criminal case No. E1010 of 2023; Republic v Samuel Jumbale.
3. The court noted that bond is a constitutional right under Article 50 of the *Constitution* of Kenya and that for a person to be denied bond, there must be a compelling reason. The Court, after taking into account all the relevant factors, made the impugned decision.
4. Being aggrieved with the said decision, the Applicant filed that notice of motion dated 13th March 2024, vide which he sought the following orders: -
 - a. That for reasons to be recorded, this application be certified as urgent, service be dispensed with in the first instance, and the matter be heard on a priority basis;
 - b. That the Honorable court be pleased to review bond terms given by Hon L N Juma in Shanzu Chief Magistrate's Court Criminal Case No E101 of 2024; Republic v Samuel Jumbale;
 - c. That the Honourable Court be pleased to revise the bond terms to bond of Kes.2,000,000/- with 1 surety; and



- d. Any other relief that this honourable court deems fit.
5. The Applicant contends that he has only been able to get 1 out of the 3 sureties demanded by the court. The said surety has a property valued at Kes.2,900,000/-, and he is unable to get the second and third sureties of a similar amount. It is submitted that the bond terms given by the lower court are stiff and excessive and that there was a likelihood of a miscarriage of justice if the same was not varied. The Applicant thus sought a variation of the bond terms granted by the trial court so that he could provide one surety as opposed to 3 sureties.
6. Article 49 (1) of the Constitution of Kenya provides that: -
- “An arrested person has the right ...
- (h) to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”
7. The right to be released on reasonable bond or bail terms exists, as prior to conviction, an accused person is presumed to be innocent until the contrary is proved. The presumption of innocence is a sacrosanct constitutional precept enshrined in Article 50 (2) of the Constitution of Kenya 2010.
8. In the view of this court, bond or bail terms are a means to a particular desired end. In this case, ensuring that a suspect attends court as and when required. Bond or bail terms aren't punishments. Where the attendance of an accused person can be assured, no bond or bail terms is necessary. That is the basis for the constitutional requirement that bail or bond terms be reasonable. Bond or bail terms are, in my opinion, reasonable if they compel the attendance of the accused person in court without causing him undue hardship.
9. The onus of proving that there are compelling reasonable to deny an accused person reasonable bond/ bail terms lies with the prosecution (see Republic v William Mwangi wa Mwangi [2014]eKLR).
10. In arriving at this decision, the court below took into consideration the fact that the accused person had been charged with 3 offences of robbery with violence contrary to section 292 (2) of the penal code, assault causing actual bodily harm contrary to section 251 of the penal code and malicious damage to property contrary to section 339 (1) of the penal code. The court noted that although it had been alleged that he would interfere with witnesses, no clear evidence had been provided. It was also noted that he has a fixed abode. On the other hand, the court noted that some witnesses interviewed by the Probation Officer were apprehensive that the Applicant might attack them if released on bond and that there was another similar case against him in court.
11. Although the decision of the court below was rendered on 13th February 2024, the Applicant remains in custody. Clearly, getting 2 further sureties has proved to be a tall order for him.
12. I note that it wasn't alleged that he is a flight risk. In my view, the third condition for his release on bond terms, to wit that he would report to the Investigating Officer once a month or as directed by him, pending hearing of the case, is sufficient, taken together with the provision of 1 surety.
13. As the Applicant is presumed innocent and bearing in mind the circumstance of this case the Notice of Motion has merit and is allowed. In the circumstance the bond terms are revised. The Applicant is granted a bond of Kes.2,000,000/- with 1 surety of a similar amount. The other conditions ordered by the court shall remain in force.
14. Orders accordingly.



DATED AND SIGNED THIS 3RD DAY OF APRIL 2024 AT MOMBASA.

GREGORY MUTAI

JUDGE

In the presence of: -

No appearance for the state; and

No appearance for the Applicant.

