



**Muse v Republic (Criminal Revision 107 of 2023)
[2024] KEHC 6107 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6107 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 107 OF 2023**

DR KAVEDZA, J

MAY 22, 2024

BETWEEN

FERDINAND INDAGASI MUSE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant is charged before the subordinate court with three counts of offences. Count I, being in possession of firearm without a certificate contrary to section 4(1) as read with section 4(3)(b) of the *Firearms Act*. Count II, being in possession of live ammunition without a firearm certificate contrary to section 4(2) as read with section 4(3)(b) of the *Firearms Act*. Count III, trafficking in narcotic drugs contrary to section 4(a)(ii) of the *Narcotic Drugs and Psychotropic Substances Control Act* No. 4 of 1994. Before the trial court, he applied and was denied bail.
2. He filed the present application seeking revision of the revision of the orders denying him bail issued on 4th December 2023. The grounds advanced were that he is a family man, with one wife and three school going children. He has a permanent residence in Kakamega. He is self-employed and offers cleaning services. He is willing to abide by the terms and conditions set by the court.
3. The constitution specifically requires under Article 49 (h) of the *Constitution* that the terms of bail to be attached to an accused who is released on bail shall be reasonable. Besides the exceptions limiting the right to bail under section 123A of the *Criminal Procedure Code*, Article 49 (h) of the *Constitution* places the burden of proof on the state to demonstrate compelling reasons.
4. The Judiciary Bail and Bond Policy Guidelines of 2015 have provided parameters to assist the court in exercising discretion judiciously. With respect to bail and bond, they require that the court in granting bail should consider the seriousness of the offence, the strength of the case, interference of witnesses, failure of the accused to attend, or where the accused is charged with another case, the need to protect



the victim(s), the security and safety of the accused, the likelihood of absconding from the jurisdiction of the court and other factors which must be weighed by the court in the interest of justice. Such an exercise of discretion requires a wholistic approach and the court must, in close circumspection, take to account the circumstances of the case and the accused person individually.

5. In its decision, the trial court noted that the applicant had been admitted to bail, in two other matters where he was facing criminal charges. The court pointed out that this was a compelling reason for the denial of bail/bond. The court proceeded to order that the matter be fast tracked.
6. Having considered provision of Section 123 of the *Criminal Procedure Code* and provision of the Kenya Judiciary bail and bond policy guidelines March 2015, it is clear that there exist compelling reasons as to why the applicant was denied bond/bail. I do find that there was a compelling reason which justified the denial of bond at this stage and the trial magistrate cannot be faulted in arriving at this decision.
7. The upshot of the above analysis is that the application for revision is found to be lacking in merit and is dismissed.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 22ND DAY OF MAY 2024

D. KAVEDZA

JUDGE

