



**Mokere & another v Republic (Criminal Appeal E188 of 2023)
[2024] KEHC 6992 (KLR) (Crim) (13 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6992 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E188 OF 2023
K KIMONDO, J
JUNE 13, 2024**

BETWEEN

CAROLINE MOKERE 1ST APPELLANT

JACKLINE SABINA 2ND APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal from the ruling by E. Mutunga, Principal Magistrate, in
Makadara Criminal Case No. E2618 of 2023 dated 14th June 2023)*

JUDGMENT

1. This is an interlocutory appeal challenging the terms of bail imposed by the lower court.
2. The petition of appeal is dated 20th June 2023. In a synopsis, the appellants contend that the bond in the sum of Kshs 500,000 with one surety; and, without the option of a cash bail is unreasonable and should be varied.
3. Learned counsel for the appellants, Mr. Nyangau, argued that the overarching objective of bail is to secure the attendance at the trial. In this case, he contended that the charges are driven by pure malice; and, may be traced to an underlying burial dispute in Milimani Commercial Court Case E992 of 2022 Doris Karimi Linguya v Carolyne Ombati. In his view, there is no basis for the charge of robbery with violence or the imposition of such steep bond terms.
4. The application is contested by the Republic. Learned Prosecution Counsel, Mr. Mutuma, submitted that the appellants were charged with robbery with violence. The particulars being that on 29th April 2023 at Kamulu Location, Nairobi, being armed with a dangerous weapon, namely machete, robbed



Doris Karimi of two mobile phones valued at Kshs 62,000 and cash, Kshs 10,000 and that immediately before or after the robbery used actual violence on the complainant.

5. I take the following view of the matter. The interlocutory appeal is before me as the first appellate court. I have re-appraised the records and drawn my independent conclusions. *Pandya v Republic* [1957] E.A. 336, *Okeno v Republic* [1972] E. A. 32, *Njoroge v Republic* [1987] KLR 19.
6. By dint of Article 50 (2) (a) of *the Constitution* the accused are presumed innocent. Further, under Article 49 (1) (h) as read together with section 123A (1) of the *Criminal Procedure Code*, they are entitled to bail unless there be compelling circumstances. In this case, the appellants were granted bail by the lower court. The 1st appellant raised a surety which was approved. The 2nd appellant has not managed to do so.
7. Like I stated, the appellants are facing a grave charge of robbery with violence. Their trial has not commenced. It would thus be highly prejudicial to comment on the merits of the charge or whether it is driven by revenge and malice. For the same reasons, I would not venture an opinion whether the charge derives from the burial dispute.
8. The only live question in this interlocutory appeal is whether the terms of the bond are disproportionate; or, whether the decision of the learned trial magistrate was based on wrong considerations.
9. To start with, the trial court had the discretion to set the terms of bail. From the typed copy of the impugned ruling, I find that the learned trial magistrate considered the nature of the charge and was alive of the judgment in the burial dispute that I particularized above. He also referred to the dictates of Article 49 (1) of *the Constitution* on the right to bail.
10. Granted all those circumstances, I am unable to impeach the decision. I decline to disturb it except to clarify the following: At the time the impugned decision was made, the lower court issued a warrant of arrest against the 2nd accused. Her learned counsel implied that she is still held in custody. In the interests of justice and for clarity, the 2nd accused shall be admitted to bail in the same terms as those granted to the 1st accused.
11. Save for that clarification, the entire appeal is unmerited and is hereby dismissed. The original lower court file and records shall be immediately returned to the lower court together with a certified copy of this ruling.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE 2024.

KANYI KIMONDO

JUDGE

Judgment read virtually on Microsoft Teams in the presence of

Mr. Nyangau for the appellants instructed by T.O. Nyangau, Kemunto & Company Advocates.

Mr. Mutuma for the respondent instructed by the office of the Director of Public prosecutions.

Mr. Edwin Ombuna, Court Assistant.

