



**Onjiko v Republic (Criminal Revision E120 of 2024)  
[2024] KEHC 9003 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9003 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL REVISION E120 OF 2024  
FN MUCHEMI, J  
JULY 25, 2024**

**BETWEEN**

**DISHON OYOO ONJIKO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Brief Facts**

1. The application for determination dated 9<sup>th</sup> April 2024 and filed on 13<sup>th</sup> May 2024 seeks for review of the bond terms to more reasonable terms. The applicant was charged in Thika Criminal Case No. E532 of 2024 with two counts being Count I the offence of obtaining money by false pretence contrary to Section 313 of the *Penal Code* and Count II conspiracy to defraud contrary to Section 317 of the Penal Code. The applicant pleaded not guilty to the two counts and the trial magistrate granted him bond at Kshs. 5 million with two sureties of a similar amount.
2. The applicant made an application for review of the bond terms with an alternative of cash bail. On 4<sup>th</sup> April 2024, the trial learned magistrate reviewed the bond terms and granted the applicant an alternative cash bail of Kshs. 2 million with a credible contact person.
3. The applicant argues that a cash bail of Kshs. 2 million and a bond of 5 million with two sureties of similar amount is out of his reach or his family which amounts to a denial of bond.
4. The applicant further states that he has not shown any signs of being a flight risk and that he is a family man with school going children aged 10 years, 15 years and 16 years, he has a fixed abode and is a member of Crisco New Life Church. The applicant is apprehensive that a great miscarriage of justice will be carried upon him if the court does not intervene and exercise its supervisory role and review the bail and bond terms to reasonable and affordable terms.



5. In opposition to the application, the respondent filed a Replying Affidavit dated 19<sup>th</sup> June 2024 and states that the applicant was charged in Thika Criminal Case No. E532 of 2024 with the offence of obtaining money by false pretence contrary to Section 313 of the Penal Code. The particulars of the offence were that on diverse dates between 4<sup>th</sup> October 2021 and 14<sup>th</sup> April 2022 in Thika West Sub County within Kiambu County, the applicant jointly with another not before the court and with the intent to defraud obtained from East Africa Sub Sahara Africa Safe Promotion, the sum of Kshs. 5,600,000/- by falsely pretending that they were in a position to source for a loan of USD 1.2, a fact that they knew to be false. The applicant pleaded not guilty and the trial magistrate granted him bond at Kshs. 5 million with two sureties of a similar amount.
6. On 12<sup>th</sup> March 2024, the applicant sought for review of bond terms and requested for cash bail and the trial court on 4<sup>th</sup> April 2024, granted a review in respect of the bond terms and set a cash bail at Kshs. 2 million with a credible contact person.
7. The respondent states that the person who has sworn the supporting affidavit to the application is the wife of the applicant and yet no reasons have been given as to why the accused person could not swear the affidavit. Further, the respondent argues that although the wife of the applicant has sworn the affidavit, she has not indicated whether she obtained the authority of the applicant.
8. The respondent further states that the bond terms set are commensurate to the charges levelled against the applicant. Furthermore, the bond terms were set on 4<sup>th</sup> April 2024, less than two months ago and thus the applicant ought to put more effort in raising the bond. Additionally, the respondent argues that by the applicant saying that he has managed to raise Kshs. 70,000/- cash bail shows that he does not appreciate the seriousness of the offence he faces.
9. Parties disposed of the application by way of written submissions.

### **The Applicant's Submissions**

10. The applicant relies on the case of *Cyril Kipruto Serem vs Republic* (Misc Criminal Application E003 of 2020) and submits that he is entitled to reasonable bail/bond terms as bail is only set to ensure the attendance of the accused and it should not be excessive that it defeats the purpose. The applicant further argues that the offences he has been charged with each carry a maximum sentence of 3 years for count I, obtaining and count II conspiracy to defraud. Both offences are misdemeanours and therefore the applicant submits that a bond of Kshs 5 million with two sureties of the same amount and a cash bail of Kshs. 2 million with a credible contact person are excessive bond terms and amount to denial of bond. The applicant argues that the bail and bond terms are so extreme, unreasonable and punitive that they amount to pre trial detention.
11. The applicant further relies on the case of *Ramadhan Iddi Ramadhan & 5 Others vs Republic [2019]* eKLR and submits that imposing high bond/bail terms that result in pretrial detention of the accused is a violation of the Constitution. Rather the terms of bail/bond should be tailored to secure and ensure the attendance of the applicant in court for purposes of his trial. The applicant further submits that he was already confined in the police cells for about 16 days before being brought to court and therefore he cannot afford the bond terms. The applicant further submits that no reasons were given as to the excessively high amounts of bond and the subsequent letters by his advocates were ignored.
12. The applicant urges the court to be persuaded by the decision in *Republic vs Abdi Azizi Guyo* Criminal Case No. E059 of 2023 where the court reduced the bond terms of an accused person charged with murder from Kshs. 500,000/- to Kshs. 200,000/- with one surety. The applicant therefore urges the



court to grant him reasonable bail/bond in line with his wife's supporting affidavit providing that she has raised Kshs. 70,000/-.

### **The Respondent's Submissions**

13. The respondent reiterates what she deposed in her affidavit and submits that the applicant has not shown any exceptional circumstances for varying of bond terms set herein. Further, the applicant has not given any sufficient reasons on the merits to warrant the grant of prayers sought in his application. As such, the respondent argues that the applicant is abusing the court process and the application ought to be dismissed.

### **The Law**

14. The High Court's power of revision is set out in Article 165 (6) and (7) which provides:-
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
15. Section 362 of the [Criminal Procedure Code](#) provides:-
- The High Court may call and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.
16. Section 364(1) of the [Criminal Procedure Code](#) provides:-
- In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may"-
- a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;
- b. In the case of any other order other than an order of acquittal alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.
17. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of [Joseph Nduvi Mbuvi vs Republic \[2019\]](#) eKLR:-

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court's revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial



proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

18. Similarly Nyakundi J in *Prosecutor vs Stephen Lesinko [2018]* eKLR outlined the principles which will guide a court when examining the issues pertaining to section 362 of the *Criminal Procedure Code* as follows:-
  - a. Where the decision is grossly erroneous;
  - b. Where there is no compliance with the provisions of the law;
  - c. Where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;
  - d. Where the material evidence on the parties is not considered; and
  - e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.
19. The above provisions convey jurisdiction to this court to exercise revisionary powers in respect of orders of the subordinate courts. This court is therefore possessed of the requisite jurisdiction to hear and determine this application.
20. From the trial court record, the applicant was charged with two counts with Count I being obtaining money by false pretence contrary to Section 313 of the *Penal Code* and Count II conspiracy to defraud contrary to Section 317 of the *Penal Code* and pleaded not guilty to both counts on 16<sup>th</sup> February 2024. The trial court granted bond at Kshs. 5 million with two sureties of a similar amount. On 12<sup>th</sup> March 2024, the applicant through his advocate asked for review of the bond terms with an alternative of cash bail. Counsel told the court that the family and friends of the applicant had managed to raise Kshs. 400,000/- and the trial court rendered its ruling on 4<sup>th</sup> April 2024 and granted cash bail at the sum of Kshs. 2 million with a credible contact person.
21. Section 123 of the *Criminal Procedure Code* gives the High Court jurisdiction to review a trial court’s decision on bail conditions. In considering whether to review a trial court’s decision on bail/bond in terms of the said provision, the court as in all exercise of power of appellate interference with the discretion of the trial court, must be satisfied that the decision of the trial court is plainly wrong or, has misdirected itself in failing to take into account a material factor or taking into account an immaterial factor and it has resulted in a miscarriage of justice. Section 123 (2) of the *Criminal Procedure Code* provides that the amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive. The applicant in this case has been charged with two counts of obtaining money by false pretence contrary to Section 313 of the *Penal Code* and conspiracy to defraud contrary to Section 317 of the *Penal Code*. The applicant is charged with offences of misdemeanours and each carries a maximum sentence of three years imprisonment. In this regard and in keeping in mind the fact that the object of bail is to secure the attendance of the accused to court, it is my considered view that the bail/bond terms are excessive. It is noted that the bond of Kshs 5 million with two sureties of similar amount which was also excessive was reviewed to cash bail of KSh.2,000,000/=.
22. In my considered view, that the cash bail sum of KSh.2,000,000/= may not be affordable to most ordinary families in this country. As such, I am in agreement that the current bail terms are indeed excessive and that this court has a sound basis of interfering with the orders of the honourable magistrate. It is also important to note that amount allegedly obtained by false pretences was



KSh.5,600,000/= which is quite a substantial amount. The court is obligated to balance the rights of the accused to bail as well as the right of the complainant as well as the impact of the offence in society. Obtaining by false pretences is prevalent in this country since a decade ago. Courts must be responsive to the needs and concerns of society at large as they sentence convicts in various criminal offences.

23. Having considered all the above arguments and the material presented in this application. I hereby allow the application dated 9<sup>th</sup> April 2024 in the following terms:-
24. That the accused shall be released on bond of KSh.2,000,000/= with one surety of a like amount. Alternatively, the accused may deposit cash bail of KSh.1,000,000/=. The orders for release made on 12<sup>th</sup> March 2024 by the court below are hereby set aside.
25. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 25<sup>TH</sup> DAY OF JULY 2024.**

**F. MUCHEMI**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

