



**Rashid v Republic (Criminal Revision E040 of 2024)
[2024] KEHC 9147 (KLR) (23 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E040 OF 2024
DR KAVEDZA, J
JULY 23, 2024**

BETWEEN

YUSUF RASHID APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed a notice of motion dated 10th July 2024, seeking a review of the bail terms imposed by the trial court in Kibera MCCR E1365 of 2024, where the applicant was admitted to a bond of Kshs 300,000/= or an alternative cash bail of Kshs.200,000/=. The application is supported by an affidavit sworn by the applicant’s advocate, Ahmed Ngaira, of a similar date.
2. The averments made in support of the application are that: The applicant was arraigned on allegations of theft on 25th June 2024. He was admitted to a bond of Kshs 500,000/= without the option of a cash bail. Later, on 9th July 2024, the court reviewed the initial bail terms to a bond of Kshs 300,000/= and in the alternative, a cash bail of Kshs 200,000/=.The applicant’s bond terms were further reviewed on 18th July 2024 to a cash bail of Kshs 75,000/= plus one contact person. The applicant has since been unable to raise the said amount. According to the applicant’s affidavit, the prescribed bail term are excessive and he cannot raise since he is a casual labourer.
3. The application was canvassed by way of oral submissions, which have been duly considered. The issue to be determined is whether the terms of bond/ bail set by the trial court should be reviewed.
4. The revisionary jurisdiction of this court is donated by Section 362 of the *Criminal Procedure Code* which provides that:

“The High Court may call for 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."

5. From the above provision, it is clear that the court can only revise orders or decisions of the lower court if it is satisfied that the decision, order, or finding is tainted with illegality, errors of law, or impropriety or that there was an irregularity in the proceedings that gave rise to the impugned order, finding or decision.
6. In this case, the accused person has remained in remand custody despite the grant of bond terms, which is proof that he cannot find a surety or raise the bail terms imposed. In the case of [*Harish Mawjee & another v Republic*](#) [2020] eKLR, it was stated that:

“... courts have sole discretion to give determinate bond terms and they can impose a combination of terms including supervision of accused released on bail if found necessary. Secondly, bond terms should not be arbitrary, but the court must consider the relevant factors affecting issuance of bond including penalty of offence and the accused ability to meet the bond terms. Thirdly, the bond terms should not be excessive or unreasonable. Fourthly, an accused has a right to seek review of bond terms from trial court or high court or appeal.”(Emphasis added)
7. The court exercises this duty in furtherance of the provisions of Article 49 (1) (h) of the [*Constitution*](#) which provides that an arrested person has the 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. Although the court can grant and /or review bond terms at any stage of the proceedings in furtherance of the accused’s constitutional right under Article 49 of the [*Constitution*](#), due regard should be given to the gravity of the offence.
8. Importantly, any bond terms granted by the court must be balanced against any injustice or prejudice that would likely be suffered by the society and/or the victim. It is trite law that the paramount principle to be considered in granting bail, is to secure the attendance of the accused during trial. It is for this reason that bail terms set should neither be so lenient as to entice the accused to abscond nor should they be so excessive so as to amount to ‘indirect’ denial.
9. In this case, this court already found that the applicant was eligible for bond, he was not a flight risk and there were no alleged threats to the witnesses. 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.
10. The [*Judiciary Bail Bond Policy Guidelines*](#) similarly provide that bond terms shall be reasonable. Although bail terms must be reasonable to enable the accused person to comply and benefit from his constitutional right, the court must also not be seen to encourage absconding and thus interfere with the administration of justice.
11. The [*Bail and Bond Policy Guidelines*](#) at page 9 paragraph 3.1. (d) provides that:

“Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they



should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.

Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account the personal circumstances of the accused person. In the circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case.”

12. I find the holding in *Harish Mawjee & another v Republic (supra)*, relevant to the circumstances of this case. The applicant herein was arrested and arraigned before the trial court where he was granted a bond of Kshs 500,000/=, which was later revised to Kshs 300,000/= or an alternative cash bail of Kshs 200,000/=. The same was further revised to a cash bail of Kshs 75,000/= plus one contact person. However, he has been unable to meet the bond terms set by the trial court hence, the application for review. It is my view that his inability to get out of prison despite having been granted a cash bail of Kshs 75,000/= with one contact person, implies that he been unable to raise the said amount.
13. As was held in the case of Harish Mawjee (supra), and a myriad of other decisions, this court is vested with jurisdiction to review its orders if there are changed circumstances. The changed circumstance in this case is that although the applicant has been granted bail, he is unable to meet the terms.
14. Consequently, I exercise my inherent jurisdiction and review the orders issued by the trial court on 18th July 2024, which are hereby set aside and substituted as follows:
 - i. The applicant, Yusuf Rashid is granted a surety bond of Kshs 100,000/= or an alternative cash bail of Kshs 50,000 with one contact person.
 - ii. The contact person shall avail a copy of his/her National Identity Card, a passport photo and a chief's letter indicating that he/she has known the applicant for a period of more than 12 months, all to be approved by the trial court.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 23RD DAY OF JULY 2024

D. KAVEDZA

.....

JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of:

Mr. Ngaira for the applicant

Mr. Mong'are for the Respondent

Njuguna Court Assistant

