



**Mwenda & another v Republic (Criminal Revision E106 of 2024)
[2024] KEHC 9902 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9902 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL REVISION E106 OF 2024
EM MURIITHI, J
AUGUST 8, 2024**

BETWEEN

LINUS MWENDA 1ST APPLICANT

PATRICK MURIITHI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The High Court has, in exercise of supervisory jurisdiction as revision court, power under section to revise bail orders of the trial court under both the general revisionary jurisdiction of section 364 and section 123 (3) of the *Criminal Procedure Code*, which provides as follows:

“123. Bail in certain cases

1. When a person is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail:

Provided that the officer or court may, instead of taking bail from the person, release him on his executing a bond without sureties for his appearance as provided hereafter in this Part.

2. The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive.

3. The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.”



2. Section 123A of the Code gives the factors that may influence grant or denial of bail as follows:

“ 123A. Exception to right to bail

- (1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - a. the nature or seriousness of the offence;
 - b. the character, antecedents, associations and community ties of the accused person;
 - c. the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;
 - d. the strength of the evidence of his having committed the offence;”

3. The applicants were charged with two (2) counts of offences of trafficking in persons c/s 3 (1) (d) as read with 3 (5) and facilitating and aiding to exit Kenya c/s 7 of Counter Trafficking In Persons Act No. 8 of 2010. As noted by the trial court the offences carry a liability of a fine of ksh.30million on conviction. The Court at plea taking on 3/1/2024 granted bail in terms of Cash Bail of 10million and Bond of 30million.
4. The bail terms were on 28/3/2024 reviewed on to a bod term of Ksh.10m with one surety of equal amount. Presumably, the cash bail which was unaffected by the review remained at Ksh.10m.
5. The DPP urged this court to consider the charge, the penalty that accused are liable upon conviction and the principle that the object of bail is to ensure that the accused attends his trial not to punish the accused for the offence with which he is charged at the pre-trial stage when the accused is presume innocent until proved guilty, and that bail terms should be too high as to amount to a denial of bail.
6. Counsel for the applicants urged he applicants cannot raise the high bond terms.
7. The offences of trafficking in persons is no doubt a serious offence with severe penalty upon conviction. At this stage however, the accused are innocent until found guilty and they are entitled to bail as a constitutional right under Article 49 of the Constitution.
8. The Court notes the uncanny relation between the penalty of fine of 30m for the offence on conviction and the term of Bond of 30m ordered at plea stage, and wishes to reiterate that the amount of bail/ bond is not an estimation of the value of the subject matter or the possible penalty on conviction.
9. The Court considers that despite the seriousness of the offence and severity of the penalty the sum of 10m cash/bond for the ordinary Kenyan citizen - and the accused have not been should to be trafficking magnates - is too high if the object is to secure his attendance to court and not to punish him prematurely before conviction.
10. The court therefore feels justified to interfere with the discretion of the trial court on bail terms herein for being excessive and inordinately high and disproportionate to the primary object of securing attendance of the accused at their trial.



Orders

11. Accordingly, for the reasons set out above, the court will pursuant to section 123 and 364 of the *Criminal Procedure Code* revise the bond terms granted by the trial court and reduce the same to a Cash Bail of One Million Shillings (Ksh.1million) or Bail Bond of Three Million Shilling (Ksh.3million) with one surety of the same amount for each accused, in the alternative.

Order accordingly.

DATED AND DELIVERED THIS 8TH DAY OF AUGUST, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances

Ms. Maore, Advocate for the Applicants.

Mr. Masila for the DPP.

