



**Abubakar v Republic (Criminal Revision E016 of 2024)
[2024] KEHC 10828 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10828 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E016 OF 2024
DR KAVEDZA, J
SEPTEMBER 17, 2024**

BETWEEN

**ALI SOMOEBWANA ABUBAKAR ALIAS ABDALA SALUM
CHOBA APPLICANT**

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed a notice of motion dated 29th May 2024, seeking an order to review the ruling delivered by the trial court on 6th September 2023 and on 27th May 2024 denying him bail pending trial. The application is supported by an affidavit sworn by the applicant.
2. The averments made in support of the application are that he is facing a charge of trafficking in narcotic drugs contrary to section 4(a)(ii) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994. After his arraignment, he applied for bail. The trial court denied bail on the ground that he is a Tanzanian national hence a flight risk. In addition, there were no compelling reasons to deny him bail pending trial. He has a fixed abode in the country and is a Kenyan national of identification number 36XXXX67. He undertakes to attend court when required. He urged the court to grant bail pending trial.
3. The application was canvassed by way of oral submissions which have been duly considered. From the record, I handled a similar application to the applicant's co-accused in Kibera High Court Misc. Criminal Application No. 34 of 2023 *Nancy Wanjiru Munyota vs Republic* wherein I allowed the application for bail review.

Analysis and determination.

4. The issue to be determined is whether the order of denial of bail by the trial court should be revised.



5. Article 49(1) (h) of the Constitution guarantees the right of an arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state pursuant to Section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya. The right for an accused person to be released on bail is not absolute.
6. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of the Constitution, the courts are to be guided by the provisions of Section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides:

“In such a determination the courts are to factor the following exceptions to limit the right to bail;

 - (a) Nature or seriousness of the offence;
 - (b) The character, antecedents, associations, and community of the accused person;
 - (c) The defendants record in respect of the fulfilment of obligations under previous grant of bail;
 - (d) The strength of the evidence of his having committed the offence:

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person;

 - (a) Has previously been granted bail and has failed to surrender to custody if released on bail, it is likely that he would fail to surrender to custody;
 - (b) Should be kept in custody for his own good.
7. The Constitution specifically requires under Article 49 (h) 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 Criminal Procedure Code and the Constitution places the burden of proof on the state to demonstrate compelling reasons.
8. In the instant application, the applicant was denied bail by the trial court on 6th September 2023 and 27th May 2024. The reason for the denial of bail was that the applicant is a flight risk since he is a Tanzanian citizen.
9. The probation officer has however, through the social inquiry report filed in court established that the applicant is a Kenyan citizen, with a fixed place of abode in Shanzu, Mombasa County. In addition, he has extended family within the same region. Further, his area chief Mwembelezega location, Kisauni sub-county has attested vide a letter dated 6th August 2024 confirming that the applicant is a resident of Shanzu, Mkoroshoni village. He annexed to his letter the death certificates of the applicant’s parents, No. 261026 and 24056 for his father and mother respectively.
10. It is trite law that compelling reasons that would lead to denial of bail a court should be real and cogent and should be such as would convince the court that it would be against the public interest to grant bail.
11. Having considered the application therefore, I find no compelling reason that would warrant the limitation of the applicant’s right to bail. Accordingly, I grant the application for bail on the following terms:



- i. The applicant is granted a bond of Kshs. 2,000,000 of a fixed asset with one surety of a similar amount.
- ii. The applicant is directed to provide two contact persons one of whom is to be an adult blood relative.
- iii. The applicant is to deposit his passport in court and shall be retained during the period of his trial.
- iv. The applicant shall not be issued with any new passport and or any temporary travelling documents of whatever nature.
- v. This order shall be served upon the Immigration Department in compliance with order (iv) above.
- vi. The applicant shall report to the investigating officer every fortnight until the conclusion of the trial.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 17TH DAY OF SEPTEMBER 2024

D. KAVEDZA

JUDGE

