



**Ali & 2 others v Republic (Criminal Revision E071 of 2024)
[2024] KEHC 13577 (KLR) (14 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E071 OF 2024
DR KAVEDZA, J
OCTOBER 14, 2024**

BETWEEN

RYAN ALI 1ST APPLICANT

HIBO ABDUHALI 2ND APPLICANT

FAHIMA YUSUF ABDILLAHI 3RD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed a notice of motion dated 9th October 2024. In the application, the applicant sought orders of revision of the orders of the trial court issued on 8th October 2024. The application is supported by an affidavit sworn by the 3rd applicant of similar date.
2. The grounds raised in support of the application are that the applicants were arrested on 26th July 2024. They were charged with the offence of assault and released on a cash bail of Kshs. 10,000. Three months later, the charge sheet was amended and the applicants were charged with the offence of robbery with violence contrary to section 296(2) of the *Penal Code* and committing and indecent act contrary to section 11A of the *Sexual Offences Act*, No. 3 of 2006. The trial court cancelled the bail previously granted and the applicants were remanded pending the preparation and presentation of a probation, report on 14th October 2024. It was contended that the 3rd accused has a five-month-old infant who is unwell and requires her immediate care. It is in the interest of justice that the applicants be produced before court and be admitted to reasonable bail terms.
3. The application is not opposed by the respondent.
4. I have considered the application, the affidavit in support and the applicable law. I have also gone through the trial court's record.



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 under 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) of the Constitution 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 section 123A of the Criminal Procedure Code, Article 49 (h) of the Constitution places the burden of proof on the state to demonstrate compelling reasons.
8. In the present application, the applicants were initially granted cash bail of Kshs. 10,000 each and were released pending trial in July 2024. Subsequently, the charge sheet was amended in October 2024, requiring the applicants to enter pleas to new charges of robbery with violence and indecent act. On this basis, the court, acting on its own motion, revoked their bail terms and ordered a pre-bail report to assess their eligibility for release on bail/bond.
9. The prosecution counsel submitted that despite his pleas to the trial court to grant the applicants bail, the trial court adamantly declined to do so.
10. The primary purpose of bail or bond is to secure the attendance of the accused in court. In determining whether to grant bail, the court considers various factors, including the seriousness of the charges. Accordingly, the trial court deemed it necessary to request a pre-bail report before setting new bond terms.
11. Notwithstanding this, the applicants had previously been released on bail without any record of absconding. Furthermore, the 3rd applicant has asserted that she is the mother of an infant who is currently hospitalized in Intensive Care Unit (ICU) and has attached medical documents in support of



the application. In addition, the state will not suffer any prejudice in the bail/bond terms are reinstated. In circumstances, it is my view that the applicants should be granted bail or bond pending completion of the pre-bail report.

12. In the premises, the application dated 9th October 2024 is allowed in the following terms:
- i. The applicants' bail/bond that was cancelled by the trial court on 8th October 2024 pending the outcome of the pre-bail report is hereby reinstated.
 - ii. The trial court shall be at liberty to review the bail/bond terms pursuant to the outcome of the pre-bail report.
 - iii. The matter shall be mentioned before the trial court on 4th November 2024.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 14TH DAY OF OCTOBER 2024.

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D. KAVEDZA

JUDGE.

In the presence of:

Echesa for the Applicants

Maroro for the Respondent

Achode Court Assistant.

