



**Mbugua v Republic (Criminal Revision E131 of 2024)
[2024] KEHC 12502 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12502 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION E131 OF 2024
LM NJUGUNA, J
OCTOBER 16, 2024**

**IN THE MATTER OF AN APPLICATION TO REVISE PUNITIVE BOND TERMS GRANTED
TO THE APPLICANT AND TO SET ASIDE ORDERS COMPELLING THE APPLICANT TO
GIVE HER SAMPLE WRITINGS TO THE POLICE IN RUNYENJES MCCR E280 OF 2024**

BETWEEN

COLLEN MUMBI MBUGUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. For determination is the notice of motion dated 26th July 2024 through which the applicant seeks the following orders:
 - a. Spent;
 - b. That the honourable court be pleased to stay the proceedings in Runyenjes MCCR E280 of 2024 pending hearing and determination of the application;
 - c. That the honourable court be pleased to issue lenient bond terms with alternative cash bail to the applicant pending the hearing and determination of the instant application;
 - d. That the honourable court be pleased to revise the bond terms awarded by the honourable magistrate and instead, issue lenient bond and bail terms; and
 - e. That the honourable court be pleased to set aside the orders dated 24th July 2024 compelling the accused to be presented to the police for the purpose of taking her writing samples to be compared to undisclosed document held by the prosecution, which orders were issued by the honourable magistrate while the criminal case was pending hearing and determination by the same court.



2. It was the applicant's case that the trial court granted her bond of Kshs.800,000/= without an alternative of cash bail yet the pre-bail report indicated that she was not a flight risk. That in the pendency of the case, the respondent made an oral application that the accused be taken to the directorate of Criminal Investigation for her writing sample to be taken for comparing with writings on a document that was in possession of the prosecution and had not been served upon the applicant. The application was opposed but the court proceeded to grant the order sought. She stated that she should not be compelled to give self-incriminating evidence thus the order of the court should be set aside.
3. The respondent filed grounds of opposition through which it opposed the application stating that the same does not meet the grounds for revision set out in section 362 of the Criminal Procedure Code. That the application is bad in law and it is an abuse of court process.
4. The applicant filed a further affidavit stating that she had been arraigned at Runyenjes Law courts where she had been charged with a similar offence. That she applied for bail and was released on a cash bail of Kshs.30,000/= and soon after her release, she was re-arrested and arraigned for the offence herein. That upon arraignment, she applied for cash bail but the prosecution opposed the application, stating that she had a past criminal record and the 2 cases were separated. That this is what culminated into the punitive bond terms brought before this court for revision. That the 2 offences could have been heard before the same court since they are similar and the court would have had jurisdiction to determine both cases.
5. The application was canvassed by way of written submissions.
6. It was the applicant's submission that this court has jurisdiction under Article 165(6) of the Constitution and section 362 of the Criminal Procedure Code to determine the revision application herein. She relied on section 25A of the Evidence Act and urged that the writing samples ordered by the trial court amount to confessions which are generally inadmissible due to their self-incriminating nature. She relied on the cases of James Njenga Kibato v DPP & 4 Others (2018) eKLR and Republic v John Kithyululu (2016) eKLR and argued that the order compelling her to give her writing sample is self-incriminating. She also relied on Articles 50(2), 29 and 49 of the Constitution which protect the accused person from giving self-incriminating evidence. further reliance was placed on the cases of Peter Ngugi Kamau v Republic (2019) eKLR and Republic v Mark Lloyd Stevenson (2016) eKLR and she urged the court to set aside the order of the trial court compelling her to give her writing samples.
7. On its part, the respondent submitted that the application was made at the earliest possible opportunity and the outcome of the writing sample analysis would be served and subjected to cross-examination at the opportune time. It relied on Article 50(1) of the Constitution and the cases of Richard Dickson Ogendo & 2 Others v AG & 5 Others (2014) eKLR, Republic v John Kithyululu (2016) eKLR and Republic v Godfrey Kipkemoi Kangogo (2018) eKLR and argued that the writing sample ordered does not infringe on the applicant's rights not to self-incriminate. It stated that on the issue of review of bond terms, this court's jurisdiction to revise the finding therein is limited under sections 362 and 364 of the Criminal Procedure Code. That the trial court exercised its discretion in setting bond terms at Kshs.800,000/= and such discretion should not be interfered with. It cited the case of Mbogo v Shab (1968) EA 93.
8. The issue for determination is whether the application has merit.



9. The revisionary power of the High Court is drawn from Article 167(6)&(7) of the Constitution 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 not 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.”

10. Section 362 of the Criminal Procedure Code provided as follows on the High Court’s supervisory jurisdiction:

“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.”

11. The application raised 2 issues; the first is review of bond terms imposed and the second issue of the order compelling the applicant to give her writing sample to the DCI. On the first issue, every accused person has a right to be released on bail or bond terms but the right is not without limits and it may be limited under certain circumstances. Article 49(1)(h) of the Constitution provides for the right to bail pending trial as follows:

“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.”

12. The Judiciary Bail and Bond Policy Guidelines provide guidance on factors the court can consider in assessing whether or not to grant bail. They are, inter alia;

- a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
- b. The strength of the prosecution case.
- c. The character and antecedents of the accused person.
- d. The failure of the accused person to observe bail or bond terms.
- e. The likelihood of interfering with witnesses.
- f. The need to protect the victim or victims of the crime.
- g. The relationship between the accused person and the potential witnesses.
- h. The best interest of child offenders.
- i. The accused person is a flight risk.
- j. Whether the accused person is gainfully employed.
- k. Public order, peace and security.



- l. Protection of the accused persons.
13. The applicant was charged with the offence of conspiracy to defraud contrary to section 317 of the *Penal Code* where the subject amount is Kshs.751,900. Before imposing the bail terms, the trial court noted the sentiments of the applicant that she is a casual laborer and single mother of 3 children, the youngest being 3 years old and that she has not been found guilty of any other offence. She is facing a similar charge in another case which is still pending and where she was released on bond. Given the circumstances of the matter, it is fair to review the bond terms downwards to Kshs.500,000/=.
14. On the issue of the order for writing sample, this is not an issue that can be handled under the supervisory jurisdiction of this Court. The option available to the applicant is to appeal against the order so that both the applicant and the prosecution can be heard substantially on the matter.
15. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 16TH DAY OF OCTOBER, 2024.

L. NJUGUNA

JUDGE

..... for the Applicant

..... for the Respondent

