



**Makokha v Republic (Miscellaneous Criminal Application  
E044 of 2022) [2023] KEHC 18166 (KLR) (11 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 18166 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
MISCELLANEOUS CRIMINAL APPLICATION E044 OF 2022**

**REA OUGO, J  
JANUARY 11, 2023**

**BETWEEN**

**PAUL WEKESA MAKOKHA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Paul Wekesa Makokha seeks to have a revision of the proceedings in Bungoma CMC court MCR E1073/22 Republic vs Jentrix Naswa Odiya and Paul Wekesa Makokha for the purpose of satisfying the correctness, legality or properly and regularity of the proceedings. The applicant also seeks that the orders made by Hon Odawo SRM the trial magistrate on the 6.9.2022 and all subsequent orders there to cancelling and/or suspending the applicant's bond terms be varied and/or sentence and that the bond can be reinstated forthwith.
2. He also seeks that his case be heard by another magistrate than the Honourable Odawo.
3. The applicant is supported by the grounds on the face of the application and his supporting affidavit. The applicant claims that the trial magistrate cancelled his bond without any lawful justification and that she then demonstrated bias to the applicant by canceling his bond. That Bond/Bail is a constitutional right and is not subject to the discretion of the Magistrate. In his affidavit he claims that he wasn't given a chance to defend himself on the allegations and that the bond was cancelled without any justifiable code.
4. The application was opposed by the Respondent. The respondent filed grounds of opposition as follows:
5. The application was canvassed by way of oral submissions. I have considered the application, the affidavit, the grounds of opposition and the oral submissions together with the proceedings before the trial magistrate.



5. The applicant was arraigned in court on the August 29, 2022 and granted bond/bail terms. He was later on released on the September 12, 2022. The complainant informed the court that the 2<sup>nd</sup> accused was threatening her life and threatened to burn her house. The prosecution informed the court that it was wrong for the accused to threaten the witnesses and sought to have his bond suspended. The accused informed the court that he didn't see the complainant. The trial court called for a report from the probation officer regarding the issue of bond. The report was presented in court and the court noted on the October 6, 2022 that the prebail report was clear that the 2<sup>nd</sup> accused was interfering with the witnesses and thereafter the accused's bond was cancelled. At that stage he sought to have his advocate attend court as he had just engaged a counsel.
6. As correctly submitted bail/bond is a constitutional right however if it is that one who is granted bond/bail is abusing it, a trial court has the discretion to suspend or cancel the bond. The trial court after being told of the threatens called for a prebail report. This was in order. I believe she did so as to be informed of the exact situation that had been presented to her. The prebail report dated 6.10.2022 informed the trial court that the accused is a trouble maker and he had made threats to the complainant as narrated in court. It recommended that he is not suitable for bond. The probation officer stated that he obtained information from the court file, the police file, the offender, the offender's brother and complainant and the sub-chief and a cross section of the neighbours.
7. The applicant was given a chance to defend himself. His rights were not breached. A court has a duty to protect the rights of the accused and complainant. Bond/bail is a constitutional right but not an absolute right. The magistrate acted appropriately after being informed of the circumstances. The magistrate acted appropriately after being informed of the circumstances in the report present in court.
8. On the issue of rescue the applicant has not demonstrated why the trial magistrate should rescue herself. Nothing has been shown that she is biased or lacks impartiality. I therefore find no merit in this application. It is dismissed. The trial should proceed as scheduled on the January 12, 2023.

**R.E OUGO**

**JUDGE**

**DATED, SIGNED, AND DELIVERED AT BUNGOMA ONLINE VIA MICROSOFT TEAMS THIS  
11<sup>TH</sup> DAY OF JANUARY, 2023**

**R.E. OUGO**

**JUDGE**

**In the presence of:**

Ms Omondi – State Counsel

**Ms Wilkister – Court Assistant.**

Applicant : Paul Wekesa Makokha – present online.

