



**Cherambai v Republic (Civil Miscellaneous Application  
E001 of 2023) [2023] KEHC 658 (KLR) (1 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 658 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL MISCELLANEOUS APPLICATION E001 OF 2023**

**DK KEMEL, J**

**FEBRUARY 1, 2023**

**BETWEEN**

**GEORGE MULATI CHERAMBAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein has filed an application dated January 24, 2023 expressed to be brought under the provisions of articles 25 (c), 49(1)(h), 50(1), 165 (6) and (7) and 259 of the Constitution of Kenya 2010, section 362 and 364(1)(b) and (2) of the Criminal Procedure Code. It seeks the following prayers:
  1. That the ruling by the learned Senior Resident Magistrate made on the January 23, 2023 in Bungoma MCSO/E014 of 2023 deferring granting bail/bod and cash bail be and is hereby revised.
  2. The applicant George Mulati Cherambi be and is hereby granted reasonable cash bail and bond in respect of case number MSCO/E014/2023 to be ascertained and decreed by this court.
  3. Costs be provided.
2. The application is supported by the affidavit of the applicant sworn on even date as well as grounds set out on the body thereof. The applicant's gravamen is *inter alia*; that the applicant is entitled to be granted bond by dint of article 49(1)(h) of the Constitution unless, there are compelling reasons; that the applicant having pleaded not guilty is presumed innocent until proved guilty under article 50(2) of the Constitution; that the trial court ought to have been guided by and considered the fact that the applicant had been granted cash bail by the OCS Bungoma police station prior to his being arraigned in court; that there was no iota of evidence placed before the court to justify denial of bail or any convincing evidence that his release would present any risks; that if any pre-bail reports were to be subsequently presented the trial court has the liberty to vary bail terms and cancel bail altogether; that



the court ought to be on the forefront in defending and preserving the fundamental human liberties under the constitution and ought not to be the one to trample on these fundamental liberties.

3. Parties canvassed the application by way of brief oral submissions.
4. Mr Wasilwa for the applicant submitted that article 49, 50, 259 of the Constitution demands that liberties must be protected. He submitted that the applicant was arrested on January 20, 2023 and later released on police cash bail of 5,000/- only for the police to later come up with false allegations yet there are no compelling reasons advanced by the state to deny the applicant bond. It was further submitted that no OB has been availed regarding the allegation that the applicant will be lynched if he is released on bond. Finally, it was submitted that even though a pre-bail report is being awaited this court has discretion to order the applicant to be granted bond.
5. Miss Mukangu for the respondent opposed the application. She submitted that the applicant faces eight counts in which the victims are police officers. She submitted that the trial court has called for a pre-bail report on the applicant and that the matter is due for mention on February 2, 2023. According to the learned counsel, the application is premature and meant to preempt the trial court's schedule on granting bail and that the trial court should be allowed to consider the matter without interference by this court.
6. I have given due consideration to the applicant's application and the oral submissions by learned counsels. It is not in dispute that the applicant was arraigned before the trial court on the January 23, 2023 where he denied the seven counts and that the trial court has called for a pre-bail report for consideration on the February 2, 2023. The issue for determination is whether the application has merit.
7. Article 165 of the Constitution empowers this court to exercise supervisory jurisdiction over subordinate courts. article 165 (6) of the Constitution provides:

“The High Court has supervisory jurisdiction over subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

165(7) – 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.

Again, the supervisory powers of the High Court over subordinate courts are also provided under section 362 of the Criminal Procedure Code as follows:

“The High Court may call 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 such proceedings of any such subordinate court.”

The applicant has invoked the above provisions in his bid to urge this court to check the record of the trial court and to see if the orders made by the learned trial magistrate are in accordance with the Constitution and statute. The applicant's main borne of contention is that the trial court denied him bail/bond despite the clear provisions of article 49(1)(h) of the Constitution which provides that an accused who has pleaded not guilty to a charge is entitled to be released on bond/bail pending a charge or trial unless there are compelling reasons to be advanced by the prosecution.



8. The revisionary powers of the High Court will be invoked in cases where the trial magistrate committed any irregularity, impropriety, mistake or illegality. The record of the trial court clearly reveals that the plea was taken on the January 23, 2023 wherein the applicant was presented with seven counts. The respondent, through its investigating officer, filed an affidavit objecting to the release of the applicant on bond pending trial. The said affidavit made a raft of allegations. The applicant did not get an opportunity to put in a rejoinder thereto. It was on the basis of the contents of the said affidavit that the learned trial magistrate canceled an earlier order for release of the applicant on bond and ordered for a pre-bail report. The trial magistrate has fixed the matter for mention on the February 2, 2023.

It is noted that the applicant has taken issue with the trial court for not allowing him to enjoy his liberties guaranteed by the Constitution. The applicant contends that he had been out on a police cash bail and thus he cannot understand the new turn of events. Prior to the presentation of an affidavit opposing the release of the applicant on bond, the trial court had already gone ahead and issued bond terms. The 12 paragraph affidavit brought a new dimension on the issue of the bond. The averments on the said affidavit raised some serious issues which went to the root of the prayer for bond pending trial. The learned trial magistrate as is the practice, called for a pre-bail report. It is only after the pre-bail report is presented that the trial court will consider the issue of the release of the applicant on bond pending trial. Even if the applicant had been out on police cash bail prior to the arraignment, there is no hard and fast rule that the trial court will adopt the said police bail terms. Once the applicant presented himself before the trial court, the said court became seized with the matter and had jurisdiction as well as discretion to impose the appropriate bond terms.

9. Looking at the circumstances of the case as well as the record of the lower court, I am satisfied that the learned trial magistrate did not go contrary or beyond the letter of the law in calling for a pre-bail report before considering the issue of release of the applicant on bond pending trial. I find that the trial magistrate adhered to the requisite procedures. As the trial court is yet to receive the pre-bail report, I find the present application to be premature and intended to pre-empt the trial court's schedule on granting bail. The trial court should be allowed the latitude to conclude on the issue of release of the applicant on bond pending trial. It is only after the trial court has determined the matter that is when the jurisdiction of this court will then be invoked.

10. In view of the foregoing observation, it is my finding that the applicant's application dated January 24, 2023 lacks merit. The same is dismissed with no order as to costs.

**DATED AND DELIVERED AT BUNGOMA THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2023**

**D. KEMEI**

**JUDGE**

In the presence of;

Wasilwa for applicant

Mukangu for Respondent

Kizito Court Assistant

