



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Jilani & 2 others (Criminal Case 24 of 2018)
[2023] KEHC 744 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 744 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 24 OF 2018
A. ONG'INJO, J
FEBRUARY 2, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

EDDLIED MANDI JILANI 1ST ACCUSED

MAKONDE RUWA BUNI 2ND ACCUSED

NGIRA KARISA CHARO 3RD ACCUSED

RULING

1. On December 19, 2022, Mr Katete Advocate for the 2nd accused made an application for reinstatement of bond for the 2nd accused. The court herein then made an order for the Investigating Officer to file an affidavit in respect thereof.
2. This court has perused the affidavit filed and sworn on December 20, 2022 by No. 85218 SGT Mohamed Hassan together with the annexures thereto. The deponent states that on March 14, 2022, the matter came up for hearing and the Accused person who was out on bond failed to appear in court for the hearing. That Mr. Wamotsa Advocate for the 2nd accused produced a letter in court purporting that the Accused was suffering from acute gastroenteritis/food poisoning and was to at Pwani Medical Centre in Kilifi Town and was granted a five-day sick leave as from March 12, 2022 to March 17, 2022. That for purposes of availing a report in court to authenticate the said letter Sgt. Mohamed Hassan together with PC. Job Some travelled to Kilifi and requested for patient records of Makonde Ruwa Buni from the in-charge Pwani Medical Centre in Kilifi Township.
3. The deponent states that Pwani Medical Centre confirmed that there were no medical treatment records in respect of the alleged patient Makonde Ruwa Buni and provided patient listing for the date March 12, 2022 and confirmation letter signed by Dr. Githinji Daniel for Director Pwani Medical Centre. That Mr. Wamotsa was asked by court to explain how he came into possession of the document



and he informed that he got the letter through the 1st accused Eddied Mandi Jilani. That the 1st accused was asked to explain how she got the letter and she said that she got it as a parcel through a public service vehicle from the 2nd accused. That a warrant of arrest was issued against the 2nd accused and summons to sureties.

4. The deponent states that he embarked on tracing the 2nd accused and the sureties and that on June 10, 2022, they managed to trace the sureties James Muranga Nyange at Zowerani in Kilifi North Sub-county, and Charo Chugu Charo at Katsoeni/Dzoni in Kaloleni sub-county. That the two sureties were served with summons and asked whether they knew of the whereabouts of the 2nd accused which they could not explain. That the sureties explained that they had no biological or family relationship with the 2nd accused and that they came to know him through one Joseph, a court facilitator on issues of bond application in court. The deponent stated that on June 21, 2022, the 2nd accused was arrested when he surfaced at his home in Gede – Watamu and brought before court. The deponent further stated that the 2nd accused is a flight risk and there is high possibility that he will abscond again from the trial process if released on bond since his conduct is wanting.
5. That on December 20, 2022 when the matter came up in court, Mr. Katete Counsel for the 2nd accused pointed out to court that the affidavit had been served on them and it deals with what the court dealt with when bond was cancelled. That the affidavit has not brought in any new matter and that the application for reinstatement of bond came after the court cancelled the bond. Counsel for the 2nd accused prayed that bond be reinstated and that the 2nd accused was found at home and arrested, and that the issue of flight risk does not arise.

Analysis and Determination

6. This court acknowledges the position that the applicant is presumed innocent until proven guilty in respect to being granted reasonable bail/bond terms. article 50(2)(a) of the [Constitution](#) of Kenya, 2010 provides that: -

‘Every accused person has the right to a fair trial, which includes the right to be presumed innocent until the contrary is proved.’

7. The cardinal consideration in granting bail/bond is to ensure that the accused person avails himself in court whenever he is required. Additionally, the bail/bond terms must also be pegged on the consideration that the accused person is presumed innocent until proven guilty, and reasonable bail terms where no compelling reasons have been given.
8. In [Republic v Mbiti Munguti](#) [2020] eKLR Odunga, J. held as follows: -

“It is true that the right to bail is not absolute and where there are compelling reasons the said right may be restricted. Nevertheless, since the [Constitution](#) expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail. What the compelling reasons are, however, depend on the circumstances of each case and these circumstances are to be considered cumulatively and not in isolation. The mere fact therefore that the offence with which an accused is charged carries a serious sentence is however not necessarily a reason for denial of bail. That ground only becomes a factor if it may be an incentive to the accused to abscond appearing for trial. Therefore, the real question that the court must keep in mind is whether or not the accused will be able to attend the trial. The imposition of terms of the bail if necessary must similarly be for the purposes of ensuring the attendance of the accused at the trial and ought not to be based



solely on the sentence that the accused stands to serve if convicted. It is therefore my view that the discretion to grant bail and set the conditions rests with the court.”

9. In determining the Accused person’s right to be admitted to bail, this court further relied on the holding in the case of *Andrew Young Otieno v Republic* (2017) eKLR, where it was stated as follows: -

“This court agrees with the applicant that the purpose of imposing bond terms is to secure the attendance of the accused before the court during trial. The terms imposed by the trial court should not be such that it amounts to a denial of the constitutional right of the accused to be released on bail pending trial. The trial court must consider the circumstances of each accused when determining bond terms to be imposed...”

10. This court finds that on March 14, 2022 when the matter herein came up for hearing, the 2nd accused person was absent and Mr. Wamotsa who represented him presented a medical report in court stating that the 2nd Accused had been given 5 days bed rest and therefore prayed for an adjournment. That on the said date, the court adjourned the matter to enable the State/Investigating Officer establish the authenticity of sick off documented. According to the evidence presented in this court, it has been established that the said letter was a forgery as the 2nd accused was neither unwell nor visited Pwani Medical Centre for treatment.
11. This court further finds that on March 16, 2022, the 2nd accused failed to appear in court and Mr. Wamotsa indicated that he could not reach the 2nd accused on phone and that going forward if he was not able to get in touch, he would make an application to cease acting. This court was only able to secure the attendance of the 2nd accused after a warrant of arrest was issued. This court has also established that the 2nd accused is not related to the two sureties who had deposited security in court to ensure his attendance and who have since been discharged.
12. In conclusion, the accused has demonstrated to court that he is a flight risk and may not appear if bail is reinstated. His application for reinstatement of bond pending determination of this case is therefore disallowed. Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS, THIS
2ND DAY OF FEBRUARY 2023**

HON. LADY JUSTICE A. ONG’INJO
JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for State

Mr. Magolo Advocate for the 1st Accused

Mr. Katete Advocate for the 2nd Accused – No Appearance

Ms. Nabwana Advocate for the 3rd Accused

Mr. Salim Advocate holding brief for the deceased family- No Appearance. Reported indisposed

HON. LADY JUSTICE A. ONG’INJO
JUDGE

Hearing on 13th March 2023



Hearing on 16th March 2023 – Notice to Mr. Katete Advocate.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

2nd February 2023

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