



**Tom v Republic (Criminal Revision E003 of 2023)  
[2023] KEHC 1024 (KLR) (Crim) (15 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1024 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E003 OF 2023  
LN MUTENDE, J  
FEBRUARY 15, 2023**

**BETWEEN**

**FELIX OTIENO TOM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Felix Otieno Tom, the applicant, approached this court seeking review of bond terms issued by the subordinate court in Makadara Chief Magistrate's Court S/O Case No 151 of 2021.
2. The applicant prays for reduction of the bond to Kenya Shillings fifty thousand. (Kshs 50,000/=) and, further consideration of an alternative of cash bail of similar amount.
3. The application is brought on the grounds that, the applicant is aged 24 years old, and, that he is an orphan and a casual labourer earning a meagre income which he uses to educate his siblings. That he is unable to raise bond terms directed by the court because they do not have a title deed for his ancestral land which is said to be under succession.
4. That bond/bail is a constitutional right under Article 49(1)(h) of the Constitution; he is a first offender with no intention to jump bail; he does not have any International connections, and, he is not a flight risk. That he promises to attend court until logical conclusion of the matter.
5. The application is not opposed but the lower court file has been availed before this court.
6. From the proceedings, the applicant was nineteen (19) years at the time of plea when bail terms were granted.



7. The applicant made an application to have the bond terms reduced but the court declined and noted that the bond terms were sufficient. The prosecution had opposed the application on grounds of the nature of the charges and the age of the minor.
8. It is trite that the right to bond or bail pending trial is a right which though constitutional may be denied where there is substantial proof of existence of compelling reasons.
9. Granting of bail is purely a discretionary power of the trial court but which power must be exercised judiciously.
10. Where the subordinate court acted outside the law or did not act judiciously this court may in its supervisory power under Section 362 of the *Criminal Procedure Code* (CPC) and further provisions of Section 123 of the CPC reduce the bond terms of the Subordinate Court. The judiciary Bond and Bail Policy is clear that bail ought not be excessive so as to be seen to deny the accused his constitutional right. The main aim in granting bail is to secure the accused attendance during his trial.
11. Paragraph 3.1(d) of the Bail and Bond Policy Guidelines provide at that:

' Right to Reasonable Bail and Bond Terms:

Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence.

Section 123 of the Criminal Procedure also adds to this and provides that bail can be granted at any time of the proceedings and at subsection 2.

(2) The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive.'

12. The accused was granted bond of Kshs 200,000/= with one surety on a charge of defilement of a minor aged 10 years. There is no doubt that the charges he pleaded to are serious and come with a temptation to abscond trial. The nature of sentence further adds to the seriousness of the offence. (See *Republic – Vs- Danson Mgunya & Another [2010] eKLR*).
13. Further, bail should not be so low and lenient to be seen as an incentive of absconding trial.
14. In my view the bond terms set by the court were considerate given the nature of the offence and practice of granting bail for such offences. What is however apparent is the fact of the applicant having not raised a surety to date.
15. In order for this court to interfere with the discretion of the trial court, it must be demonstrated that there existed some irregularity, incorrectness, illegality or impropriety in the order of the trial court. This has not been done. Therefore, the application fails. Accordingly, the application which is unmeritorious is dismissed.
16. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**L. N. MUTENDE**

**JUDGE**

