



REPUBLIC OF KENYA



**Chandi v Republic (Miscellaneous Criminal Application E285 of 2022)
[2023] KEHC 2692 (KLR) (Crim) (14 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2692 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E285 OF 2022
JM BWONWONG'A, J
MARCH 14, 2023**

BETWEEN

ELISON MUTUNGATI SHEIKH CHANDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant is an accused person before the Chief Magistrate's court in the following courts. In Milimani (CR 429/20, CR 431/20, 1366/21, CR 606/22 & CR E1273/22), Kibera (CR 1412/21) and Makadara (CR 3813/22 & 3883/22), wherein he is charged with the offences of obtaining money by false pretence contrary to section 313 of the *Penal Code* (cap 63) Laws of Kenya.
2. He was approached this court by notice of motion seeking an order to consolidate all of the foregoing cases against him.
3. He has also sought orders for reinstatement of cash bail forfeited by the court in CR 432/20, CR 2112/19, CR 1273/21, CR 1412/21 and CR 429/20.
4. The application is supported by a supporting affidavit dated September 26, 2022 and a further affidavit dated November 10, 2022. The grounds raised are that: The charges are similar in nature and emanated from a similar transaction. The accused right to a fair trial will be prejudiced if all the matters are heard separately. The consolidation of the cases will facilitate the efficient and expeditious disposal of the issues. Consolidation will save costs and time. In addition, consolidation will avoid duplicity of cases founded on the same charge sheet.
5. The applicant is apprehensive that the investigating officers are using the justice system to frustrate him.



6. On the issue of reinstatement of bail, he states that he has been granted bail which has been forfeited to the state for non-attendance. He urges the court to consolidate his bail terms to enable him raise the amount. He also seeks reinstatement of the bail forfeited to the state for non-attendance. He is innocent until proved guilty. He undertakes to respect and abide by the terms set by the court.

The applicant's written submissions

7. The applicant submitted that he is currently facing financial distress due to adverse legal action against him. He is not a flight risk and has a permanent residence in Imara Daima Estate in Nairobi. He urges the court reinstate him on his cash bail, which was forfeited. He also prays to be admitted to a reasonable consolidated bail/bond after the matters against him are consolidated.

The respondent's written submissions

8. Ms. Edna Ntabo learned Prosecution Counsel submitted that the orders of consolidation of the bail terms are untenable in light of the different transactions of the alleged offences. On whether the forfeited bail should be reinstated, counsel submitted that the trial court did not err in having the bail forfeited. She argued that the application lacks merit and should be dismissed.

Issues for determination

9. Having considered the application, the response, the submissions of the parties and the applicable law, I find that the issue for determination is whether the applicant has made out a case for the grant of the orders sought.

Analysis and determination

10. The applicant asks the court to exercise powers of revision conferred on the court by article 165 (6) and (7) of the 2010 Constitution of Kenya and sections 362 and 364 (1) (b) and 2 of the [*Criminal Procedure Code*](#) (cap 75) Laws of Kenya. Article 165 (6) and (7) clothe the High Court with supervisory powers over subordinate courts in the following terms:

“165 (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.”

Section 362 of the [*Criminal Procedure Code*](#) provides that:

“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. A perusal and consideration of the application before me reveals that the applicant is aggrieved by the decision of the trial courts that forfeited his bail/bonds to the state.
12. He has urged the court to reinstate the bail terms set in the aforementioned matters.



13. On the second limb, the applicant has sought the prayer for consolidation of the criminal cases contained in this motion. A perusal of the respective lower court files indicates that the charges relate to different complainants, different dates when the offences were allegedly committed and this may involve different investigating officers and different police stations. Therefore, it is not appropriate to consolidate these cases.
14. On the second issue, the applicant sought a consolidation of his bail/bond terms. The applicant is presumed innocent until otherwise proven. He emphasized his right to bail under article 49 of the Constitution. Bail terms are set to ensure the attendance of an accused person for his trial. Under article 49 of the Constitution, the applicant is entitled to reasonable bail terms. While there is no express provision in the Constitution or the Criminal Procedure Code specifically providing for consolidated bail terms, in appropriate cases, such order may be made in furtherance of the accused's rights under articles 49 and 50 of the 2010 Constitution of Kenya. Each case must be considered on its merits and circumstances remembering always the presumption of innocence in favour of the applicant.
15. Having reviewed the matter before me, I am of the view that a consolidated bail/bond in respect of all eleven (11) cases is not prudent, in this omnibus application.
16. In the light of the foregoing, the application is hereby struck out on account of being omnibus.
17. The accused/applicant is directed to file a separate application for each case; for every case must be decided on its peculiar facts and circumstances.

RULING DATED SIGNED AND DELIVERED THIS 14TH DAY OF MARCH 2023.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

Applicant in person

Mr. Mutuma for the respondent

