



**Kulo v Republic (Miscellaneous Criminal Application  
E025 of 2023) [2023] KEHC 18553 (KLR) (12 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18553 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
MISCELLANEOUS CRIMINAL APPLICATION E025 OF 2023**

**EM MURIITHI, J**

**JUNE 12, 2023**

**BETWEEN**

**AMINA HUSSEIN KULO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By an application under certificate of urgency dated 11/5/2023 pursuant to Articles 49(i)(h), 50(2) (a) of the Constitution, sections 123 and 81 (1)(a) & (ii) of the Criminal Procedure Code and all other enabling provisions of the law, the applicant seeks that, “This honorable court be pleased to review the cash bail decision in Isiolo, Merti Mobile Court Chief Magistrate Criminal Case No E113/23: Republic versus Amina Hussein Kulo to reasonable cash bail terms as opposed to the Kenya Shillings One Million, Five Hundred Thousand only issued by the trial court.”
2. The application is premised on the grounds that the applicant was arrested and charged in Isiolo Merti Mobile Court on 10/5/2023 with 8 counts of various offences. Upon pleading not guilty, the trial court issued a bond of Ksh 2,000,000 or a cash bail of Ksh 1,500,000. Her pleas before the trial court for the reduction of the cash bail were unsuccessful, and she has been in incarceration ever since, due to her inability to raise the cash bail. She is apprehensive that the bail and bond terms are so extreme, excessive, unreasonable and punitive that they amount to pre-trial detention in view of the charges against her. Bail is only set to ensure attendance of the accused and it should not be excessive that it defeats its purpose. She has various disputes with the complainant over issues of community land rights, and the community filed Isiolo ELC Constitutional petition No 006/2021 Adbirahman Osman and 164 others v Northern Rangelands Trust (NRT) & Others. She believes that her continued stay in custody is aimed at intimidating the community members to speak against the atrocities that are being committed by the complainants in her community. She is a mother with young children including an infant, and her continued incarceration highly prejudices the minors who solely depend on her. She pleads with the court to intervene by allowing her application.



3. The respondent opposed the application vide grounds of opposition dated May 26, 2023 that, “The trial court did exercise its discretion judiciously upon taking into account the circumstances of the case and the applicant; The bond terms granted by the trial court were neither excessive nor unreasonable; The trial court exercised its discretion which was commensurate to the offence committed.”

### **Analysis and determination**

4. Section 123 of the [Criminal Procedure Code](#) provides that:

“(1) When a person, other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail: Provided that the officer or court may, instead of taking bail from the person, release him on his executing a bond without sureties for his appearance as provided hereafter in this Part. (2) The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive. (3) The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.”

5. In considering whether to review a trial court’s decision on bail in terms of section 123 (3) of the [Criminal Procedure Code](#), the Court must be satisfied that the decision of the trial court is plainly wrong or that the trial court misdirected itself in failing to take into account a material factor or taking into account an immaterial factor which has resulted in a miscarriage of justice. (See *Mbogo v Shah* (1968) EA 93).

6. The right to reasonable bail and bond terms is underpinned in the [Judiciary’s Bail and Bond Policy Guidelines](#) as follows:

“Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.”

7. This court in [Cyril Kipruto Serem v Republic](#) [2020] eKLR, rendered thus,

“The amount of bail or bond is not supposed to be an approximation of the value of the subject matter of the criminal charge. It does not follow that the higher the value of the property subject of the trial the higher the bail bond terms. It is with respect faulty reasoning because, were it so, those poor offenders on charges, for example, of destruction or attempted fraudulent obtaining, of property of high value would never secure hefty bail and bond terms imposed. Terms of bond are not meant to punish the accused for any perceived guilt for the charges leveled against him. Nor are the terms meant to ensure he is detained awaiting trial to avoid his escape or to ensure punishment. Terms of bail or bond should be tailored to secure and ensure the attendance in court of the accused for purpose of his trial. If the case meets the criteria for grant of bail in that there are no compelling reasons to deny



bail, then the conditions for bail must be such as the accused in the particular case is able to meet. So that grant of bail is not a backdoor denial of liberty contrary to, and in mockery of, Article 49 (1) (h) of the Constitution. The accused is innocent until proved guilty and he is entitled to the Article 25 fair trial protections afforded an accused under the Constitution.”

8. As accurately urged by the applicant’s counsel, the purpose of bail is to ensure that the applicant attends court whenever required to do so by the court.
9. This court finds that the cash bail of Ksh 1,500,000 was excessive in the circumstances. It has been urged that the applicant is still in incarceration even after being admitted to bail. That is so because the bond terms are unreasonable and thus not affordable by the applicant.
10. The discretion of the trial court in imposing bail terms for accused persons before it is accepted, but the same is subject to the statutory review provisions of section 123 of the Criminal Procedure Code and the revisionary jurisdiction of section 364 of the Criminal Procedure Code, as well as the general supervisory jurisdiction of the High Court under Article 165 (6) and (7) of Constitution.
11. The court is alive to the fact that bail terms are usually set at Ksh.500,000 with one surety for accused persons facing murder charges, and thus the bail terms set by the trial court for the applicant who is facing a myriad of offences, were on the higher side, as to amount to denial of bail.

#### **Orders**

12. Accordingly, for the reasons set out above, the applicant’s bail and bond terms are reviewed as follows:
  1. The order for bail/bond of Two Million (Ksh 2,000,000) or a cash bail of One Million Five Hundred Thousand (Ksh 1,500,000) imposed on the applicant by the trial court is set aside.
  2. The applicant shall execute a bond of five hundred shillings (Ksh 500,000/-) with two sureties; or deposit the sum of three hundred thousand shillings (Ksh 300,000/-) as cash bail.
- 13 Order accordingly.

**DATED AND DELIVERED THIS 12<sup>TH</sup> DAY OF JUNE, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES**

Mr. Masila for DPP.

Mr. Mugambi for Makaka for Applicant.

