



REPUBLIC OF KENYA



**Omwenga v Republic (Criminal Revision E006 of 2023)
[2023] KEHC 18529 (KLR) (Crim) (2 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18529 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E006 OF 2023**

K KIMONDO, J

JUNE 2, 2023

BETWEEN

GIDEON OMWENGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant seeks review of the bond terms imposed by the lower court in the Makadara Chief Magistrate's Court in Sexual Offence Case Number 164 of 2019. On July 4, 2019, the trial court granted the applicant a bond of Kshs 300,000.
2. He now prays that the same be substituted with a cash bail of Kshs 50,000. The request for revision is contained in his Notice of Motion dated December 16, 2022.
3. When he appeared before me, he argued that the terms of the bond are steep, and that the lower court has declined to revise them. He claimed that his studies have been interrupted by his incarceration.
4. On May 30, 2023, I heard further arguments from both the applicant and the learned counsel for the respondent.
5. I take the following view of the matter. Under section 362 of the *Criminal Procedure Code*, 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.
6. The overarching objective of bail is to ensure the accused attends trial. See *Michael Juma Oyamo & another v Republic* [supra]; *Muraguri v Republic* [1989] KLR 181.



7. In the instant case, the applicant faces the grave charge of defilement contrary to section 8 (1) as read with 8 (3) of the *Sexual Offences Act*. He is however deemed innocent.
8. He has been granted bail by the lower court. The bond terms are not onerous in all the circumstances of this case. Furthermore, in matters of this nature, the trial court is best placed, on the materials before it and the nature of the charge to set appropriate bail terms. Paraphrased, the trial magistrate has discretion in setting the terms of bail. The request for a cash bail of Kshs 50,000 for such a grave offence; and, in the absence of a surety, may not guarantee the attendance of the accused at his trial.
9. The upshot is that the revision is unmerited and is hereby dismissed.
It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF JUNE 2023.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of:

Applicant (in person).

Ms. Ntabo for the respondent instructed by the office of the Director of Public prosecutions.

Mr. Edwin Ombuna, Court Assistant.

