



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Wambugu (Criminal Case 26 of 2019)  
[2023] KEHC 19068 (KLR) (Crim) (19 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19068 (KLR)

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

**CRIMINAL  
CRIMINAL CASE 26 OF 2019**

**LN MUTENDE, J**

**JUNE 19, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JAMES WANYIRI WAMBUGU ..... ACCUSED**

**RULING**

1. James Wanyiri Njuguna, the accused, having denied the allegations put forth of committing murder sought to be released on bond/bail pending trial. Although the application was vehemently opposed by the State, the accused was granted bond of Kenya Shillings One Million (1,000,000/-) and in the alternative a cash bail of Kenya Shillings Five Hundred Thousand (Ksh 500,000/-).
2. Through a Notice of Motion dated June 30, 2022 drawn and filed by the firm of L Maobe and Company advocates, the accused seeks to be released on reduced terms of bond or bail.
3. The application is premised on grounds that the accused/applicant has been in custody since the time of arrest and that his family is unable to raise the cash bail amount. That the family's only fixed asset/land is registered in the name of his deceased father. That the accused does not have any fixed asset save for the beneficial interest in his father's estate. And, that the accused is no longer in gainful employment.
4. The application is supported by an affidavit, deposed by accused who avers inter alia that the family is able to raise cash bail of Ksh 100,000/=.
5. The application was disposed through oral submissions. It was urged by Mr Maobe, learned Counsel for the accused that the trial is likely to take long and that the accused has been in custody since 2019 when he was arrested.



6. Ms Ogwen learned Prosecution Counsel, argued that the prosecution had opposed the earlier application for bond and a probation report was similarly filed. That the accused is a threat to himself and to others, that there is no change of circumstances and that it is not known where he would live if granted bond.
7. In reply thereto, Mr Maobe reiterated that the family of the accused owns land and a home where he would live and that there is no report from prison showing that he is a threat to himself.
8. In the earlier ruling of the court on the right of the accused to bond pending trial, the court found that the prosecution had not discharged its burden of proving compelling reasons to deny the accused bond. The court considered the seriousness of the charge faced and the rights of the victim, and most importantly, the issue of the accused not absconding.
9. The application for bond review is guided by proof of change of circumstances favouring new bond terms. The new terms may lead to enhancement or reduction of bond terms, and, the court can also revoke bond terms depending on the facts presented.
10. The issue at hand is whether the accused is eligible to bail review. Appropriate conditions were set by the court which do not seem reasonable since he remains in custody to date. It is trite that each case must be determined on its merits and in the end, justice must be seen to be done to parties.
11. The principle is that bond is granted to secure the attendance of the accused, bond must be reasonable since stringent terms that cannot be complied with defeat that purpose and would amount to denying the accused the right to bail as well.
12. Article 49(1) (h) of the *Constitution* refers to the right to reasonable bond terms. The provision of the law provides thus:
  1. An arrested person has the right—
    - (h) To be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
13. However what amounts to reasonable bond terms is not an issue of precision as each case must be determined on its circumstances. The threshold depends on the facts and also the seriousness of the offence, antecedents of the accused must not be overlooked.
14. In the case of Harish Mawjee (ibid) Lessit J (As she then was) held that:

' There are certain overarching principles that govern the administration of bail and bond by Courts. First of all, courts have sole discretion to give determinate bond terms and they can impose a combination of terms including supervision of accused released on bail if found necessary. Secondly, bond terms should not be arbitrary, but the court must consider the relevant factors affecting issuance of bond including penalty of offence and the accused ability to meet the bond terms. Thirdly, the bond terms should not be excessive or unreasonable. Fourthly, an accused has right to seek review of bond terms from trial court or high court or appeal. The issue is when an accused can enjoy bail review.'



15. In the case of *Mohamood Chute Wote & 2 others vs Republic (2021) eKLR* GL Nzioka J addressing the issue of the provision of law as provided by Article 49 and Section 123 of the *Criminal Procedure Code* stated as follows:

' The key word is; 'reasonable.' Thus, the question that arises is: what criteria should be used in determining what is reasonable. In my considered opinion, the starting point is the recognition of the fact that, under Article 50(2) of the *Constitution* of Kenya, 2010, every accused person is presumed innocent until proved guilty. The purpose of bail and bond terms is to ensure therefore that the accused attends the trial. Further, the provisions of section 123A of the Criminal Procedure Code provides the relevant circumstances to be considered, including; nature and seriousness of the offence, character of the accused, record of compliance with previous bail and bond terms and strength of the evidence to be adduced.'

It is also trite that bond terms though lenient should not form a leeway for absconding.

16. The Bail and Bond Policy Guidelines provide that '...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. Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account the personal circumstances of the accused person. In the circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case. See paragraph 3.1 and page 9 of the Bail and bond policy guidelines.
17. In the instant case the accused faces a serious charge, the offence of murder is bailable but it also carries a possible death penalty. The accused stands trial having denied being culpable which means being presumed innocent and thus cannot be adjudged as guilty at this stage. However, the circumstances of each case ought to be treated differently, a life was lost and there may be chances of absconding if terms set are very lenient. The court must not be seen to provide an incentive for absconding and ultimately frustrating the trial. With this in mind, I find the suggested amount of Ksh 100,000/= being not reasonable and applicable in the present case
18. The court appreciates that the accused is still in remand and that he is unable to comply with bond terms, however, looking at the strength of evidence adduced so far, the interest of justice would call for stringent terms remaining set. However, considering the fact of the accused being innocent until proven otherwise, and the likelihood of the case taking long because of capacity, I do review bond terms set from Ksh. 1,000,000/- to 800,000/- with a surety in a like sum. Other orders/conditions remain as set.
19. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY**

**THROUGH MICROSOFT TEAMS AT NAIROBI,**

**THIS 19<sup>TH</sup> DAY OF JUNE 2023.**

**L. N. MUTENDE**



**JUDGE**

**IN THE PRESENCE OF:**

*Accused /Applicant*

*Mr. Maobe for Accused*

*Ms. Adhiambo H/B for Ms. Ogweno for ODPP*

*Court Assistant – Mutai*

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