



REPUBLIC OF KENYA



**Republic v Ochwal (Criminal Case E035 of 2020)
[2023] KEHC 21786 (KLR) (Crim) (25 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21786 (KLR)

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

**CRIMINAL
CRIMINAL CASE E035 OF 2020**

LN MUTENDE, J

JULY 25, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

VICTOR ORICHO OCHWAL ACCUSED

RULING

1. Victor Oricho Ochwal, the accused, having denied the allegations against him of having committed murder contrary to Section 204 as read with Section 204 of the *Penal Code*, sought to be released on bond/bail pending trial. Although the application was vehemently opposed by the State, this court ultimately granted him bond of Kenya Shillings five Hundred thousand (Ksh 500,000/-) with a surety in a similar sum.
2. Through a Notice of Motion dated 13th day of October, 2022, drawn and filed by Farah Munoko & Company Advocates, the accused seeks review or variation of bond terms issued by this court on May 27, 2021, so that the accused can be admitted to lenient bail terms.
3. The application is premised on grounds inter-alia that the accused has been in remand custody since October 17, 2020; despite all reasonable efforts made by the family, they have failed to secure and/or meet bond terms granted; and that it is only fair that the orders sought be granted.
4. The application is supported by an affidavit, deposed by the accused who reiterates what is averred on the grounds of the application and proposes to be released on either bond of Ksh 300,000/- or a cash bail of Ksh 100,000/-.



5. The application is unopposed. In setting bail terms at the outset, this court took into consideration circumstances of the case. 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.

7. Bond is discretionary, but, it is pegged on various factors, the paramount one being turning up for trial. Terms and conditions that were attached to the bond granted herein have not been complied with because, seemingly they were not practicable.

8. The bail and bond policy guidelines, Kenya provides 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.”

9. Pretrial detention cannot be justified as it deprives an accused person liberty and undermines presumption of innocence. In the instant case the accused has demonstrated that bail terms set were not reasonable as he has failed to find a suitable surety. Bond review is guided by proof of change of circumstances that would require revision of earlier terms.

10. Notably, bond terms set were not reasonable as the accused failed to raise a surety as afore-stated. He has been in custody for a duration of two (2) years, eight (8) months. No doubt the accused faces a serious charge, the offence of murder though bailable carries a possible death penalty which may be an incentive to abscond if terms set are very lenient. The court must not be seen to provide an inducement to abscond and ultimately frustrating the trial.

11. The upshot of the above is that the application succeeds, in that I do review bond terms set from Ksh 500,000/- to Ksh 300,000/- with a surety in a like sum.

12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 25TH DAY OF JULY 2023.

L. N. MUTENDE

JUDGE

