



**Republic v Inziani (Criminal Case E043 of 2022)
[2023] KEHC 19495 (KLR) (Crim) (4 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E043 OF 2022
LN MUTENDE, J
JULY 4, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

DOMINIC INZIANI ACCUSED

RULING

1. Dominic Inziani, the accused, having denied the allegations against him of committing murder sought to be released on bond/bail pending trial. Although the application was vehemently opposed by the State, this court granted him bond of Kenya Shillings Eight Hundred thousand (Kshs 800,000/-) with a surety in a similar sum.
2. Through a Notice of Motion dated 20th day of October, 2022, drawn and filed by Murimi Waweru Advocate, the accused seeks review, variation, and, setting aside of bond terms issued by this court on 20th December,2021, so that the accused can be admitted to reasonable bail terms.
3. The application is premised on grounds that the court granted the accused/applicant bond of Kshs 800,000/- with a surety in a similar sum, and deterred him from contacting Susan, a witness who has since testified. That despite being granted bond, the accused has continued to be incarcerated as he cannot meet bond terms. That before his arrest the accused, a sole bread winner of his family of a house wife, and two (2) minors aged six(6) and three (3) years ,respectively, rented a house for which he paid monthly rent of Kshs 2000/- in Kawangware. That the accused has been condemned by his status of destitute not to secure the bond terms.
4. The application is supported by an affidavit, deposed by the accused who reiterates what is averred on the grounds of the application.



5. The accused solely relied on the application which was opposed by the State through Learned Prosecution counsel Ms. Ogwenyo who urged that there was no explanation made regarding difficulties encountered in securing a surety.
6. In setting bail terms and conditions at the outset, this court took into consideration circumstances of the case. The accused person's position and that of the secondary victims, one of whom he was not required to contact during pendency of the case until her evidence would be recorded, which has now been done. 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 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 he comes from an extremely humble background as he used to pay rent in the sum of Kshs 2000/- per month. Although he stated so, he did not indicate his capability to enable the court form an opinion as to what would be reasonable in the circumstances. 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. He has been in custody for a duration of two (2) years. 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 Kshs 800,000/- to Kshs 200,000/- with a surety in a like sum.
12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 4TH DAY OF JULY 2023.



L. N. MUTENDE
JUDGE

