



**Mugure v Republic (Criminal Case 18 of 2019)
[2023] KEHC 22472 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22472 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE 18 OF 2019**

M MUYA, J

SEPTEMBER 21, 2023

**IN THE MATTER OF ARTICLE 49 (1) (H) OF THE CONSTITUTION OF
KENYA ARTICLE 2,3,10,27,50,159,160,169 AND 241 OF THE CONSTITUTION
IN THE MATTER OF KENYA DEFENCE FORCE ACT NO. 25 OF 2012 (REVISED 2018)
IN THE MATTER OF S. 77 OF THE CRIMINAL PROCEDURE CODE**

BETWEEN

PETER MWAURA MUGURE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The respondent raised a preliminary objection to the application for bond pending hearing and determination of the applicant's case of murder.
2. The gist of the preliminary objection is that this court has no jurisdiction to entertain the application for bond on account of the matter being *res judicata*.
3. The grounds are that the Notice of Motion application dated 23rd of March had earlier on been determined on March 9, 2023 and thus the court became functus officio.
4. That circumstances have not changed to warrant review of the bond terms since the ruling of March 9, 2023 hence the application is fatally and incurably defective.
5. In the main, this is an application for review of bond applications which had been denied.



6. In the case of *Republic v Diana Suleiman Said and another* (2014) eKLR the court held

“The changed circumstances of the case are so altered that compelling reasons are disclosed for refusal of bail or for review of terms thereof, the court as a court of Justice must reserve for itself a power to revisit the issue in the interest of Justice not only for the accused but also for the complainant and the society at large. In the same way an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused. The main issue for the determination by this court is whether they changed circumstances for review of the bond application but not the issue of *res judicata*.”

7. The court has jurisdiction to entertain an application for bond when so placed before it and may or may not grant the application bearing in mind the test of changed circumstances.

The preliminary objection has no merit and it is disallowed.

The application for bond to proceed to hearing.

RULING READ AND DELIVERED IN OPEN COURT THIS 21ST DAY OF SEPTEMBER 2023.

HON. JUSTICE M. MUYA

JUDGE

In the presence of:

Ombongi hold brief for Gori

Mwangi for the state

HON. JUSTICE M. MUYA

JUDGE

Mr. Mwangi

We will be seeking to file a replying affidavit within 14 days.

Mr. Gori

We object to 14 days. The prosecution is not fair to us. The state was served with the application in good time.

Mr. Mwangi

We had put up a Preliminary Objection. We need 14 days.

Court

The Prosecution is granted 10 days to file replying affidavit mention on October 12, 2023 for highlighting of submission.

HON. JUSTICE M. MUYA

JUDGE

