



**Republic v Selote (Criminal Case E020 of 2023)
[2024] KEHC 15917 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 15917 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E020 OF 2023
DO CHEPKWONY, J
OCTOBER 18, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

NO. 81135 CPL KIPKURUI SELOTE APPLICANT

RULING

1. What is before this court for determination is the Notice of Motion application dated 10th June, 2024 filed under Articles 43 (1) (a), 49 (1) (h) and 50 (2) (a) of the Constitution of Kenya and Section 123 A, 124 and of the Criminal Procedure Code Cap 75 Laws of Kenya. The application seeks the following orders:-
 - a. Spent.
 - b. That this Honourable Court be pleased to review the order it issued on the 22nd January, 2024 denying the Applicant herein bail and bond terms.
 - c. That this Honourable Court be pleased to vacate and/or set aside the orders it issued on the 22nd January, 2024 denying the Applicant herein bail and bond terms.
 - d. That this Honourable Court be pleased to admit the Applicant reasonable affordable and lenient bond/bail terms.
 - e. That in the alternative to the foregoing, an Order to issue directing that the Applicant/accused be taken for specialized medical treatment and care.
 - f. That the Honourable Court be pleased to make any further orders it deems fit and just.



2. The Application is based on the grounds set out on its face and the Supporting Affidavit of the accused person, Kipkurui Selote Soo sworn on the instant date. The Applicant holds that in the Ruling delivered on 22nd January 2024, the court provided an avenue that it may revisit its directions or orders upon demonstration of a change of circumstances. It is the Applicant's case that he sustained serious bodily injuries following a road traffic accident which led to deformity of his thumb and left knee joint, hence he suffers from partial immobility which causes a severe recurring pain. According to the Applicant, Article 43 (1) (a) of *the Constitution*, he is entitled to the highest attainable standard of health which includes health care services. The Applicant holds that he has been seeking treatment at Nairobi Remand prison health centre which does not have the capacity to dispense specialized medical treatment and he is apprehensive that once he undergoes reconstructive surgery, he will need after care services which are not available at the remand facility.
3. The Applicant has also stated that since he was a Police Officer, he has been and continues to be subjected to constant harassment and torture while in the remand from both the convicts and the remandees who he arrested in the course of discharging his duties. He has thus urged the court to consider his health concerns and safety and grant him release on lenient bail/bond terms. He has promised and/or undertaken, and adds that he will adhere to the terms given by the court as this shall not interfere with the witnesses and he is not a flight risk as he is ready to deposit his travel documents with court.
4. The Applicant contends that in the event he fails to comply with any of the conditions set by the court, it shall be of liberty to cancel the bond terms. He has urged the court to be guided by the provisions of the Bail and Bond *Policy Guidelines of 2015*, Section 123 A of Criminal Procedure Code and Article 49 (1) (h) of *the Constitution*. He has also urged the court to allow his application and review the Ruling delivered on 22nd January, 2024.
5. When the matter came before court on 14th August, 2024, Mr. Gacharia, Prosecution's Counsel indicated that it will neither file a Response nor submissions in the matter as it intends to rely on those previously filed. He further states that the matter was already determined by the court in the Ruling. Mr Muchemi Counsel watching brief for the Victim's family also stated that there are no changes in the circumstances. The Respondent has and also relied on their earlier filed Replying Affidavit and arguments on the same issue.

Analysis and Determination

6. I have read through and analysed the grounds upon which the application is based and the response thereto by the prosecution/Respondent. I find that in this application, the Applicant is seeking a review of the orders issued vide a ruling delivered on 22nd January, 2024 in which his Court declined to order the release of the Applicant/accused on bail/bond.
7. An application for review is provided for under Section 362 of the Criminal Procedure Code in the following terms:-

[362].Power of High Court to call for records

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.



8. From this, the question that follows is that has the Applicant made out a case worth reviewing the orders issued in the ruling delivered on 22nd January, 2024 in terms grounded thereof.
9. In its ruling delivered on 22nd January, 2024, this Court declined the application for release of the Applicant/accused on bail/bond terms on the ground that the prosecution/Respondent had demonstrated sufficient compelling and overwhelming reasons. In the said ruling, the court went on to state that the Applicant would revisit the application after all the long prosecution's witnesses have testified so as to preserve their evidence and protect them from any interference, threats and intimidation from the accused/Applicant and or upon the Applicant demonstrating a change in circumstances.
10. In the instant application, the Applicant has relied on the rider of "upon demonstration of change in circumstances" in urging the court to allow his application and review its decision.
11. It is worth noting that in its ruling delivered on 22nd February, 2024, the court made a comprehensive finding and determination based on the prosecution arguments and pre-bail information presented by the Probation Officer on 19th March, 2023. The Applicant has sought for a review of this decision on the ground that he is due for reconstructive surgery following an injury he sustained from a road traffic accident that he was involved in where he suffered a deformity of his thumb and left three joint. According to the Applicant/accused, Article 43(1) of *the Constitution* entitles him to the highest attainable standard of health which includes health care, and thus Nairobi Remand Prison Health Centre he has been attending does not have the capacity to dispense specialised medical treatment and the aftercare services he requires.
12. However, in the letter dated 19th April, 2024 from Nairobi Remand Health Centre, it has been indicated that the Applicant/accused is awaiting orthopaedic review for reconstructive surgery at Mbagathi Hospital. This is contrary to what the Applicant/accused has stated and he has not adduced any other evidence to show that he will not be able to access specialised treatment and aftercare service while in remand custody.
13. Furthermore, having read through the ruling delivered on 22nd January, 2024, the court notes that the main reason the Applicant/accused was denied release on bond/bail term was the possible interference with the many prosecution witnesses in his capacity as a Police Officer. It will be appreciated that the hearing in this case is yet to take off, meaning that there is still need to protect and preserve the evidence of these witnesses.
14. The matter is scheduled for hearing on 22nd and 23rd January, 2025 and perhaps, depending on whether or not the same proceeds, the Applicant/accused may be at liberty to move the court in this regard.
15. In the upshot, the court finds that the Notice of Motion application dated June 10, 2024 is premature and unmerited, a result of which the same is dismissed.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 18TH DAY OF OCTOBER , 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Kimathi holding brief for Mr. Mumu counsel for the Applicant



M/S Ndeda counsel for Respondent/State

M/S Muchemi counsel for Victim's Family

Accused – present

Court Assistant - Martin

