



**Int’Veld v Republic (Miscellaneous Criminal Application E080 of 2024)
[2024] KEHC 14055 (KLR) (Crim) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E080 OF 2024
LN MUTENDE, J
NOVEMBER 4, 2024**

BETWEEN

JAN INT’VELD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By an order of this court dated 13th day of February, 2024, Jan Int’ Veld alias Teacher Jan alias Dad alias Mzungu, the Applicant herein was denied bail.
2. On the 14th day of March, 2024, the firm of Danstan Omari & Associates approached the court seeking review and setting aside of the trial court order declining to recuse itself from hearing the matter, and the denial to direct the Office of the Director of Public Prosecutions (ODPP) and Directorate (of Criminal Investigations (DCI) to furnish the accused person’s advocate in the matter with all the evidence they intended to rely on.
3. On 27th March, 2024, the applicant filed an application seeking an order directing urgent preparation and filing of Bail Information Report in court so that the court can admit the applicant on bail.
4. On 10th June, 2024 the applicant through the firm of Otieno Aluoka & Co. Advocates, yet again filed another application, seeking admission of further evidence of his current medical status considering that the evidence would enable the applicant to be released on affordable, fair and just terms pegged on medical grounds.
5. The applications are based on grounds that bail granted by the trial court was cancelled by the instant court having found that the applicant has no fixed place of abode, but, circumstances have since



changed. That the applicant is 72 years old and his health is deteriorating in light of his medical history, and, uncertainties of facing trial in a foreign land.

6. That the applicant has a history of epilepsy, spinal cord stenoses, arrhythmia of the heart as well as allergy and polyneuropathy. An affidavit deposed by Laura Auma states that the applicant has a fixed place of abode being her partner who takes care of her children and intended to marry her before his arrest.
7. Further, that the court has sanctioned violation of the applicant right to fair trial by the fact of the prosecution not having furnished the applicant with documentary evidence as required by law. That he has been frustrated during trial; he has not been able to instruct an advocate to mount his defence, and, the trial court dismissed his application for recusal and proceeded to hear six (6) witnesses.
8. Arguing that there are no compelling reasons calling for incarceration, the applicant states that the key witnesses who are children already testified hence he cannot influence them. That he has provided for the two (2) children during his stay in remand and he is amenable to restricted movement.
9. In response, the respondent relied on the affidavit filed in criminal Revision No. 465 of 2023 in which the applicant was denied bail.
10. Submissions were filed by the applicant in support of the applications dated 27th March, 2024 and 10th June 2024, which I have taken into consideration alongside authorities cited namely *Cyril Kipruto Serem v Republic* (2020) eKLR; *Kizungu & another* 2023 KEHC *Republic v Dwight Sagaray & 4 others* (2013) eKLR.
11. In the initial application, I have been called upon to exercise Supervisory Powers of the court enshrined in Section 362 of the *Criminal Procedure Code* that provides thus:

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.

12. The revisionary power bestowed upon the High Court enables it to correct errors or irregularities made by the subordinate court. In the application, the court has been called upon to set aside orders of the subordinate court which declined to recuse itself from the matter. Notably, that particular application seems to have been disregarded as it was not argued. This court therefore restrains itself from considering what it has not been invited to act upon.
13. The main argument put forth is therefore the question whether there has been change of circumstances that would call for grant of bail hence review of the order by this court. The question of review of bail terms was considered in the case of *Republic v Diana Suleiman said and another* (2014) eKLR, where Muriithi J. stated that:

“The changed circumstances test is one of common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the 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 that 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.”



14. This court considered averments put forth, pre-bail report and the Children Officer's Report prior to reaching the decision to deny the applicant bail. It was established that Laura Auma was not the only companion of the applicant. There was a likelihood of the applicant interfering with the children in issue. By going to stay with Laura he will be returning to the minors, key witnesses in the matter. The allegation that he continues to provide for them even while in remand custody is proof of having influence over them. Nothing has been said about the other children of his other companion based in Eldoret. The minors who are vulnerable must be protected because it is a matter of the applicant having authority over them.
15. There is also the question of the applicant being a flight risk and the question of the validity of his visa that was addressed. He claims the visa was valid until February 2024. Currently, what is the position? This being the month of October, 2024, it is apparent that he does not have an endorsement to be lawfully in the country.
16. Further evidence availed is generally medical evidence. It is averred by the applicant that he has been treated at Kenyatta National Hospital as well as Aga Khan Hospital. This is evidence of availability of medical facilities that can deal with his condition. For that reason, the question of access to justice being hindered does not arise.
17. The right to fair trial regarding denial of documentary/electronic evidence cannot be considered by this court as the applications placed before it were with respect to bail review. This would call upon the applicant filing relevant applications in that regard.
18. From the foregoing, the applications for review of bail terms fail. Accordingly, they stand dismissed in their entirety.
19. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 4TH DAY OF NOVEMBER, 2024.

**L. N. MUTENDE
JUDGE**

