



REPUBLIC OF KENYA



KENYA LAW
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**Karenju v Republic (Miscellaneous Criminal Application E041 of 2024)
[2024] KEHC 15144 (KLR) (19 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15144 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MISCELLANEOUS CRIMINAL APPLICATION E041 OF 2024
AK NDUNG’U, J
NOVEMBER 19, 2024**

BETWEEN

PAUL NDERITU KARENJU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant being aggrieved by the orders of bond/bail terms of the subordinate court and vide a Notice of Motion dated 8th October, 2024 seeks the following orders;
 - i. Spent.
 - ii. That the honourable court be pleased to revise or review or set aside the bond terms of 2 million with two sureties like amount and order that the Applicant be released upon such affordable or reasonable bond terms or cash bail to secure his release from custody and to enable him attend trial in Nyahururu Cr. Case No. E1046 of 2024.
2. The application is supported by the affidavit of the Applicant in which he states that;
 - a. The right to bond or bail is a constitutional one.
 - b. The judiciary policy guidelines on bond or bail and decongestion of prisons are clear.
 - c. The offences the accused person is facing relates to two title deeds and the total of 6 counts, 3 for each title may amount to multiplicity of counts.
 - d. The accused person pleaded not guilty and is presumed innocent.
 - e. The purpose of bond/bail is to secure liberties and attendance during trial only.



- f. There were no compelling reasons or grounds for imposing such a high scaled bond terms and it was not demonstrated that the accused is a flight risk.
 - g. The court be pleased to revise or set aside the lofty bond terms and impose such reasonable and affordable bond terms.
 - h. The bond terms of Kshs.2,000,000/- with two sureties was excessive.
 - i. It is mete and just that the application be allowed as prayed.
3. Further, the application is supported by the supporting affidavit of the Applicant stating that on or about 7th October, 2024 he was arraigned and charged with 6 counts of offences related to two title deeds.
 4. That prior to presenting himself in court, he was out on police cash bail of Kshs.20,000/- which bail terms he honoured by attending court without fail.
 5. That he is suffering from high blood pressure a fact which was made known to court and it requires management, medication and treatment that may not be accorded while in custody.
 6. He denied the 6 counts and a plea of not guilty was entered.
 7. His advocate on record applied for his release on bond and/or reasonable cash bail of say Kshs.20,000/- or thereabouts intimating to court of his health condition and the prosecution was not opposed to his release only praying for the court to exercise its discretion.
 8. The trial court granted him a bond of Kshs.2,000,000/- with 2 sureties like amounts due to seriousness of the offences, which sureties he is unable to secure and has since been remanded in at Nyahuru G.K. Prison which is congested and cold and falls way below the constructional dictates.
 9. That it is not the seriousness of the offence that determines the bond terms to be set but his availability or ability to attend court for trial and that there were no compelling reasons advanced or anything to do with him being a flight risk established so as to set such high scaled bond terms which overlooked his innocence.
 10. That the judiciary policy guidelines on bonds and bail, decongestion of prisons as well as his constitutional innocence and liberties were ignored by the trial court.
 11. The Respondent filed no response to the application.
 12. From the trial court record, the applicant was charged with 2 Counts of forgery of Title deeds, 2 Counts of making a document without authority and 2 Counts of Uttering false documents. These are serious charges. So, what does the law provide in respect of bail and the conditions for granting of the same by the courts?
 13. The foundation of bail or bond in Kenya is the Constitution and the Criminal Procedure Code, Cap 75 of the Laws of Kenya. Article 49(1)(h) of the Constitution states as follows:

“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or a trial, unless there are compelling reasons not to be released.”



14. Section 123(A) of the *Criminal Procedure Code* sets out exceptions to the right to bail or bond. The provision was brought on board with a view to align the *CPC* with the *Constitution*. It provides that: -
- “(1) Subject to Article 49 (1) (h) of the *Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all relevant circumstances and in particular –
- a) the nature of seriousness of the offence;
 - b) the character, antecedents, associations and community ties of the accused person;
 - c) the defendant’s record in respect of the fulfilment of obligations under previous grants of bail; and
 - d) the strength of the evidence of his having committed the offence.
- (2) A person who is arrested or charged with any offence shall be granted bail unless the Court is satisfied that the person-
- a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions), it is likely that he would fail to surrender to custody;
 - b) Should be kept in custody for his own protection.”
15. In the present application, the trial court did grant the applicant bond and in issue now is whether the conditions set are reasonable and whether the court should interfere.
16. Section 123 of the *Criminal Procedure Code* gives the High Court jurisdiction to review a trial court’s decision on bail conditions. In considering whether to review a trial court’s decision on bail/bond in terms of the said provision, the court, as in all exercise of power of interference with the discretion of the trial court, must be satisfied that the decision of the trial court is plainly wrong or, that the court has misdirected itself in failing to take into account a material factor or taking into account an immaterial factor and it has resulted in a miscarriage of justice. Section 123 (2) of the *Criminal Procedure Code* provides that the amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive.
17. The Applicant was granted a bond of Kshs.2,000,000/- with 2 sureties of like sum. No doubt the offences here are of a serious nature. The seriousness of the offence is not, of its own, a reason for denial of bail but the court cannot fail to appreciate that the seriousness of the offence becomes a relevant factor to consider bearing in mind that penalties on a possible conviction could be an incentive on the part of the applicant to abscond.
18. The purpose of bail being to ensure that an accused person attends his trial, bail conditions must of necessity be geared towards achieving that objective. The terms of bail must therefore commit the accused to appear for trial.
19. I have considered the charges and the terms of bail set. In my view, a bond of Kshs.2,000,000/- with 2 sureties is on the face of it an overkill. It is possible to ensure the attendance of the accused to court by having a single surety of the said sum or 2 sureties of lesser amounts.
20. Though the Applicant was on a cash bail before he appeared for plea taking, it is worthy of note that the circumstances have changed in that the charges which were then at investigation stage have now



been confirmed and am of the persuasion that given the nature of the charges herein, a cash bail may not be appropriate, and if granted, it would have to be of a substantial amount.

21. I find the terms of bail set by the trial court as manifestly excessive and in that regard, this court has the necessary legal standing to interfere with the exercise of the said discretion, this without losing sight of the objective to ensure the Applicant attends trial.
22. I set aside the orders on bail by the trial court and substitute thereof an order that the Applicant shall be released on a Personal Bond of Kshs.500,000/- with 2 sureties of like sum.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF NOVEMBER, 2024

A.K. NDUNG’U

JUDGE

