



**Njiru & 2 others v Republic (Criminal Revision E141 of 2024)
[2024] KEHC 14469 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14469 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION E141 OF 2024
LM NJUGUNA, J
NOVEMBER 20, 2024**

BETWEEN

SWALEH ABDALLA NJIRU 1ST APPLICANT

DENNIS MUTHOMI NYAGA 2ND APPLICANT

ALFRED WANYOIKE NJOROGE 3RD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. For determination is the notice of motion dated 30th October 2024 through which the applicants seek the following orders:
 - a. Spent; and
 - b. That the honourable court be pleased to call and revise the order of the Principal Magistrate in Siakago MCCR E630 of 2024 made on 17th September 2024 denying to admit the applicants to bail and thereafter make an order admitting the applicants to reasonable bail terms.
2. The applicants stated that the court should not have denied them bail merely on the suspicion that they may flee to Tanzania. That they are aware of the *Extradition (Commonwealth Countries) Act* 1968 and that even if they leave the jurisdiction, they can be brought back because of cross border cooperation amongst the East African Countries. That, however, they are not a flight risk since their family live in Embu. That the court should have considered the provisions of Article 50(2) of the *Constitution* which holds them innocent until proven guilty. They stated that they are willing to comply with any bail terms that the court will set.
3. The respondent filed a replying affidavit sworn by CPL. Peter Chepkwony who deposed that the applicants were charged with 9 counts of serious offences being robbery with violence, gang rape,



conspiracy to commit a felony and abduction. That they were arrested aboard the motor vehicle stolen for their victims in Taita Taveta near the Kenya-Tanzania border. That they were in possession of Tanzanian currency and the circumstances showed that they were escaping to Tanzania. That they were apprehended and taken to Siakago Police Station. He stated that the prosecution satisfied the trial court that the applicants were a flight risk and so they were denied bail on that basis.

4. The application was canvassed by way of written submissions.
5. The applicants submitted that this court has revisionary powers as provided under Article 165 of the Constitution and section 362 of the Criminal Procedure Code. They relied on the cases of Hillary Wachira Wanjiku v. Republic (2020) eKLR and Republic v. Sifuna (Criminal Case no. E014 of 2023) (2023) KEHC 22379 (KLR) where the court stated that the primary consideration in granting bail is whether the accused person will be able to attend trial. Further reliance was placed on the case of Dominic Inziani v. Republic (2021) eKLR.
6. They submitted that there was no sufficient evidence to substantiate the allegation that they were a flight risk. They relied on Articles 49(1)(h) and 50(2)(c) of the Constitution and article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) which provides that it shall not be a general rule that persons awaiting trial shall be detained in custody. Further reliance was placed on the case of Republic v Juma Ndung'u (2015) eKLR and the Bail and Bond Policy Guidelines 2015 which provides for principles of granting or denying bail and bond.
7. In its submissions, the respondent relied on sections 362 and 363 of the Criminal Procedure Code and the case of Cyril Kipruto Serem v. Republic (2020) eKLR where the court cited the case of Mbogo v. Shab (1968) EA 93. It urged that the circumstances under which they were arrested proved that they were planning to flee the country before they were arrested in Taita Taveta County while in the stolen motor vehicle. It relied on Article 49(1)(h) of the Constitution and the Judiciary Bail and Bond Policy guidelines. It stated that the applicants have not demonstrated how the trial court misdirected itself in failing to grant bail/bond.
8. The issue for determination is whether the application has merit.
9. The revisionary power of the High Court is drawn from Article 167(6)&(7) of the Constitution which provides:
 - “(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
10. Section 362 of the Criminal Procedure Code provided as follows on the High Court’s supervisory jurisdiction:

“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.”



11. The trial court declined to release the applicants on bail/ bond terms for the reason that they are flight risks considering the circumstances under which they were arrested. Article 49(1)(h) of the [Constitution](#) provides for the right to bail pending trial as follows:

“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”
12. The prosecution told the trial court that the applicants, who are facing serious charges, were arrested while aboard a stolen motor vehicle and they had Kenyan and Tanzanian currency. They were found in Taita Taveta near the Kenya Tanzania Border and the prosecution interpreted the circumstances around the arrest to mean that they were planning to flee the country. The applicants told the court that their families live and work in Embu and that they are well aware of the extradition laws between Kenya and Tanzania, if they end up fleeing to Tanzania.
13. The trial magistrate gave a detailed ruling on the reasons why he denied the applicants bail as he released one of the offenders on bail terms specified therein. The [Judiciary Bail and Bond Policy Guidelines](#) provide guidance on factors the court can consider in assessing whether or not to grant bail. They are, *inter alia*;
 - a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
 - b. The strength of the prosecution case.
 - c. The character and antecedents of the accused person.
 - d. The failure of the accused person to observe bail or bond terms.
 - e. The likelihood of interfering with witnesses.
 - f. The need to protect the victim or victims of the crime.
 - g. The relationship between the accused person and the potential witnesses.
 - h. The best interest of child offenders.
 - i. The accused person is a flight risk.
 - j. Whether the accused person is gainfully employed.
 - k. Public order, peace and security.
 - l. Protection of the accused persons.
14. The applicants are facing charges of robbery with violence which carries death penalty upon conviction, gang rape, which carries a sentence of 15 years imprisonment which may be enhanced to life imprisonment, conspiracy to commit a felony and abduction. These are serious offences in the eyes of the law. The trial magistrate found no plausible explanation for the applicants being near the border with the foreign currency, so far away from the scene of crime, and he concluded that they had planned to flee the country. He was not apprehensive that the applicants will interfere with witnesses in the case.
15. In the same way, this court is not persuaded by the applicant’s averments that even if they flee to Tanzania, border cooperation within East Africa would enable them to be arraigned to answer to the charges they are facing. Given the prevailing circumstances, I find that the trial court’s finding on bail



is sound and needs not be revised. It is, however, in the interest of justice that the matter be prosecuted expeditiously.

16. Therefore, the application lacks merit and it is hereby dismissed.

17. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 20TH DAY OF NOVEMBER, 2024.

L. NJUGUNA

JUDGE

..... for the 1st Applicant

.....for the 2nd Applicant

.....for the 3rd Applicant

.....for the Respondent

