



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 36 OF 2019**

**HEZEKIAH KIMEMIA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***[Revision from orders in S.O. 38 of 2019 at Kigumo by A. Ogonda, Senior Resident Magistrate dated 18<sup>th</sup> June 2019 and 17<sup>th</sup> July 2019]***

**RULING**

1. The applicant has moved the court for *revision* of two rulings and orders dated 18<sup>th</sup> June 2019 and 17<sup>th</sup> July 2019 denying him *bail*.
2. The grounds are detailed in a Notice of Motion dated 29<sup>th</sup> August 2019 and two depositions of even date by his counsel of record; and, by the applicant's wife.
3. Section 362 as read with section 364 of the **Criminal Procedure Code** vests the High Court with wide power to *call* for the *record* of the lower court to examine the decision on *correctness, legality or propriety*.
4. In a nutshell the applicant avers that his original application for bail; and, the subsequent application for *review* were unfairly or unreasonably dismissed by the lower court. The effect is that the applicant has languished in custody since 22<sup>nd</sup> May 2019 when he was first arraigned in court. Paraphrased, the applicant contends that the learned trial magistrate improperly exercised her *discretion* thereby denying the applicant his constitutional rights guaranteed by **Articles 29, 49 and 50** of the **Constitution**.
5. I have carefully studied the original record. The applicant is charged with *defilement* of a child aged 11 years. The learned trial magistrate went into great length and cited the law and some precedents to back up the impugned decisions. The overarching objective of bail is to ensure the accused *attends* his trial. **Muraguri v Republic** [1989] KLR 181. However, the trial court, retains *discretion* whether to grant bail. The decision has of course to be made in a *judicious* manner.
6. The applicant has applied for *revision*. It is inappropriate in the circumstances. In my view, the applicant should have lodged an *appeal* against the two decisions denying him bail. In that way, the High Court would properly deal with the *merits* of the decisions by the lower court. The less I say about it the better.
7. The *revision* is accordingly *refused*. The original record shall be transmitted back to the trial court forthwith.

It is so ordered.

**DATED, SIGNED and DELIVERED** at MURANG'A this 3<sup>rd</sup> day of October 2019.

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of-**

The applicant (absent)

Mr. C. Mbugua for the applicant.

Mr. S. Mutinda for the Republic.

Ms. Elizabeth, Court Clerk.