



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
HCCR. E047 OF 2020

REPUBLIC

.....**PROSECTUION**

VERSUS

ZACHEUS WASONGA BALLAH

ACCUSED

REVISION ON BAIL/BOND

INFORMATION

1. The accused person **Zacheus Wasonga Ballah** is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code Cap.63 Laws of Kenya.
2. Particulars of the offence being that on the 11th November, 2020 at Githurai Kimbo area in Kasarani Sub-County, Nairobi County murdered **Hamza Nyapola**.

NOTICE OF MOTION

3. On 26th May, 2025 the Accused person filed a Notice of Motion seeking the following orders.

1. THAT, he moved the Court under Article 49(1)(h) of the Constitution of Kenya, **Sections 123 and 124** of the Criminal Procedure Code, and other enabling provisions of the law, seeking a review of the bail terms imposed in this court by the previous judges.
2. THAT, he submitted that the bail conditions set by the Trial Court are excessively high, unreasonable, and oppressive, thereby hindering his ability to secure release despite my willingness to comply with lawful requirement.
3. THAT, the principle of fairness in bail conditions dictates that terms imposed must be reasonable and proportionate to the offense charged, ensuring access to justice without undue hardship.

This application seeks intervention by this Court to review, adjust, and provide fair and just bail conditions in line with constitutional guarantees.

4. THAT, the Court be pleased to review the bail and

bond terms issued vide the Ruling delivered on 30th April 2024 before Hon. Lady Justice Lilian Mutende.

5. THAT, this application be certified as extremely urgent and be heard at the earliest opportunity.

6. THAT, this Court has jurisdiction to hear and determine this application. The applicant submits that this Honourable Court has the legal mandate to hear, review, and determine this bail application under the constitutional and statutory provisions governing bail reviews.

7. THAT, the Bail terms are excessive and unfair. The

bail imposed is too high for me to afford, effectively leading to my continued detention despite my willingness to comply. Bail should guarantee attendance in Court, not serve as an unintended punishment before trial.

8. THAT, financial hardship prevents compliance he is

not in a financial position to meet the bail conditions set. My livelihood has suffered due to prolonged detention, and raising the required amount remains an impossible task. I humbly request this court's kind intervention to grant a reasonable review based on my economic realities

9. THAT, his Constitutional Right to Bail should be upheld,

Article 49(1)(h) of the Constitution of Kenya guarantees him the right to bail unless compelling reasons exist to deny it. He is not a flight risk and has no reason to abscond court proceedings. He kindly requests the Court to uphold this principle in his case.

10. THAT, he is not a Flight Risk his roots are deeply grounded in his community, and he have every intention of attending court faithfully. I do not intend to evade justice and am ready to comply with any reasonable bail conditions this court may grant.

11. THAT, no compelling reasons exist to Justify High Bail Conditions The prosecution did not provide compelling reasons for imposing such harsh bail terms. I humbly request that this

honourable court reconsiders the necessity and proportionality of the bail currently in place.

12. THAT, the applicant humbly submits that, following the tragic passing of his sister's husband, the late Titus Ochiel, his beloved sister Roselyne Awino Ballah has endured immense emotional and financial hardship while supporting her family. Despite these difficulties, she has demonstrated extraordinary resilience and unwavering support toward the applicant during this challenging period.

13. THAT, understanding the importance of the applicant's liberty and the constitutional right to bail, his sister, despite her personal sacrifices, has made the heartfelt and selfless decision to assist in securing his freedom. She is willing to post the proposed cash bail of Kshs. 50,000/-, ensuring that he granted an opportunity to await trial outside custody while complying with all legal obligations.

14. THAT, this act of generosity is reflected not only by her unwavering commitment to justice but also a strong assurance that the applicant will faithfully attend all court proceedings

without fail. Her support further emphasizes the applicant's deep familial ties, sense of responsibility, and commitment to due process, which should be taken into consideration.

15. THAT, in light of the compassionate circumstances surrounding his sister's support, and in the spirit of fairness and justice, the applicant humbly prays that this court exercises judicial discretion in reviewing and reducing the cash bail terms to a more reasonable and manageable amount from Kshs 200,000/ cash bail to Kshs, 50,000/-which his sister Roselyne Awino Ballah is ready and willing to deposit in his release to secure his freedom. He remains committed to fulfilling all obligations set forth by this honourable court.

16. THAT, her selfless gesture demonstrates not only family support but also the assurance of compliance with court directives. The applicant further pledges to attend all required hearings faithfully while fully adhering to all bail conditions imposed by the court as he strong and truly believes he will be set free at the conclusion of this matter since the

prosecution has no cogent evidence to prove their case beyond reasonable doubt against me as low require.

17. THAT, in light of these considerations, the applicant humbly requests the court to review the bail terms with sympathy and fairness, acknowledging the genuine effort made by the applicant's sister to facilitate his release and uphold justice and he only managed to case with one witness since had been in custody since he was arrested.

18. THAT, his continued detention Has Adversely Affected his well being in custody under harsh conditions for a prolonged period has taken a toll on his health, dignity, and ability to support my dependents. He pleaded with this Court to consider these humanitarian factors and grant me reasonable boil terms.

19. THAT, his health condition has significantly worsened as he is suffering from severe ulcers and persistent hack pain which has been worse for the last three years without proper treatment due to the prison overpopulation.

Due to the seriousness of his condition, the prison health centre has placed me in the sick bay, where patients in prison with critical medical needs are accommodated. The medical attention available within the facility is inadequate for managing my deteriorating health, necessitating urgent intervention."

20. THAT, the Court should review and grant the Applicant a reasonable cash bail of Kshs. 50,000/- and a bond of Kshs. 100,000/-, respectively considering the Applicant's financial constraints, prolonged inability to raise the initially set bail amount, and the pressing humanitarian circumstances surrounding this application bringing the principle of fairness in this matter. He relied on t the case of: **Rashid v Republic (Criminal Revision E040 of 2024)** The High Court at Kibera Lady Justice Diana Kadveza exercised its revisionary jurisdiction under **Section 362** of the Criminal Procedure Code to review excessive bail terms. The Court ruled that bail should be reasonable and proportionate, granting the applicant a surety bond of Kshs

100,000 or an alternative cash bail of Kshs 50,000

21. THAT, this Court should issue any other order in the interest of justice and also seek the Court to issue any such further orders, directions and/or relief it may deem fit and expedient in the circumstances of this application.

GROUND OF APPLICATION

1. The Court to released the Applicant on a bond of Kshs. 500,000/- with one surety of a similar amount with the alternative of cash bail of Kshs. 200,000/- on 30th April 2024 where the cash bail was not reviewed by the Trial Judge Lady Justice Lilian Mutende's Ruling which was delivered through virtual conference.
2. THAT, the Applicant humbly submits that, following the tragic passing of his sister's husband, the late Titus Ochiel, his beloved sister Roselyne Awino Ballah has endured immense emotional and financial hardship while supporting her family. Despite these

difficulties, she has demonstrated extraordinary resilience and unwavering support toward the applicant during this challenging period.

3. THAT, no compelling reasons that exists to justify high Bail Conditions The prosecution did not provide compelling reasons for imposing such harsh bail terms. He request that this honourable court reconsiders the necessity and proportionality of the bail currently in place.
4. THAT, the Bail terms are excessive and unfair. The bail imposed is too high for him to afford, effectively leading to his continued detention despite his willingness to comply. He felt it was to serve as an unintended punishment before trial. In the case of **Birende Mgawa Herman Republic Criminal Revision 61 of 2019** where High Court at Nairobi Milimani Lady Justice Jessie Lesiit (as she then was) reduced the cash bail from Kshs, 100,000 to Ksh 30,000/- after considering that the High Court found that the initial bail terms were

excessive and reviewed the cash bail amount to Kshs. 50,000, ensuring fairness and accessibility.

5. THAT, financial hardship prevents compliance like in his case here where he is not in a financial position to meet the bail conditions set. His livelihood has suffered due to prolonged detention, and raising the required amount remains an impossible task. He humbly requests the court's kind intervention to grant a reasonable review based on my economic realities.
6. THAT, his Constitutional Right to Bail should be upheld Article 49(1)(h) of the Constitution of Kenya guarantees him the right to bail unless compelling reasons exist to deny it. He poses no flight risk and have no reason to abscond court proceedings. I kindly request the court to uphold this principle in my case.
7. THAT, he is not a Flight Risk his roots are deeply grounded in his community, and he has

e every intention of attending court faithfully, I do not intend to evade justice and am ready to comply with any reasonable bail conditions this court may grant

8. The applicant herein (accused) is suffering from critical chest problem and Ulcer's diagnosis, situation which the prison facility is not in the position to handle as per the overpopulation experienced in prison which led the accused person to be admitted in the sick bay due to his critical condition which needs special care,
9. After the death of our sister, Roselyne Awino Ballah's husband death she is still scarified her needs and is now willing to help the Applicant (accused) by posting the proposed cash bail of Kshs. 50,000/- to secure my freedom.
10. THAT, his daughter, Cate Brightney, who is now 14 years old, has been enduring severe psychological distress and anxiety since his

arrest, as she was solely under his care before this unfortunate situation. Having grown up without a mother, his prolonged incarceration has left her feeling abandoned, helpless, and emotionally vulnerable. The last time she saw me was on 11th November 2020, and since then, her life has been filled with uncertainty and unbearable hardship, both financially and emotionally he humbly prayed that the court exercises its jurisdiction powers as espoused under **Article 49 (1)(h) of COK** and section 364 of criminal procedure code (CPC) and review my cash bail and bond to affordable amount as prayed.

11. THAT, due to dire financial constraints arising from his continued detention, Cate's education has been severely disrupted as she struggles to access the necessary school resources. Her mental well-being has deteriorated, and she now faces untold anguish, having lost the stability and parental support that is crucial at her young age.

12. THAT, it is also important to highlight that the criminal case he is facing is one that may take a considerable amount of time before reaching its conclusion, given the overwhelming backlog within our courts. If bail is not reviewed and granted at an affordable and reasonable amount, his daughter will continue to suffer irreparable emotional harm, and the damage to her well-being will become permanent and devastating. He humbly implored this Honourable Court to exercise its discretion under Article 49(1)(h) of the Constitution and review his bail terms, allowing him to reunite with his daughter, fulfil my parental responsibilities, and support her through this distressing period.

13. THAT, he humbly beseeched the Court to grant the prayers sought herein. As the accused, he gave his solemn undertaking to comply fully with all bond terms that the Court deems fit to review and impose. He is fully committed to abiding by all conditions set to ensure his continued cooperation with the judicial process

14. As accused/applicant he stand to inform the court that raising the awarded cash bail of Kshs 200,000/-has been night mare in the family to raise, since my mother has been suffering from high blood pressure and diabetes for the last three years where even settling the medical bill has never been easy for her back at home.

ANALYSIS & DETERMINATION

THE LAW ON BAIL AND BOND

22. Article 49(1)(h) of the Constitution provides that:-

An accused person has the right....

(h) To be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.

23. The considerations in determining whether or not to grant bail are set out in **Kenya Judiciary's Bail and Bond Policy Guidelines**, March 2015 at P. 25 -4.26 which sets out judicial policy on bail/bond thus:-

“The following procedures should apply to the bail hearing:

- a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:-**
- b. That the accused person is likely to fail to attend court proceedings; or**
- c. That the accused person is likely to commit, or abet the commission of, serious offence; or**
- d. That the exception to the right to bail stipulated under Section 123A of the criminal Procedure Code is applicable in the circumstances; or**
- e. That the accused person is likely to endanger the safety of victims, individuals or the public; or**
- f. That the accused person is likely to interfere with witnesses or evidence; or**
- g. That the accused person is likely to endanger national security; or**
- h. That it is in the public interest to detain the accused person in custody.”**

24. These legal guidelines were complied with and the Trial Court Hon D.O. Ogembo J on 2/11/2021 granted

the Accused person bond of Ksh 2 million with surety of similar amount and in the alternative Cash Bail of Ksh 300,000/-

25. On 26/1/2023, the Trial Court Hon D.O. Ogembo J vide Ruling of 26/1/2023 reviewed and reduced bond to 1 million with surety of similar amount or in the alternative Ksh 200,000/-in Cash bail.

26. On 30/4/2024, Hon L.N.Mutende LJ reduced bond to Ksh 500,000/- and Cash bail of Ksh 200,000/-

ORAL SUBMISSIONS

27. The instant application is the 4th Application on reduction of bail and bond. Now premised on the Accused person's health condition and financial incapacity.

28. On 1/10/2025 made oral submissions in aid of bail/bond reduction application. Ms Nganga Counsel for the Accused person sought reduction of Cash bail from Ksh 100,000/- to Ksh 50,000/- to be paid by Accused person's sister. The Accused person has a right to liberty and he is presumed to be innocent only if proved guilty. Since 2020 he has been in custody and only 1 witness testified.

29. The Counsel for Accused referred to case-law

Kariuki vs Republic E012 of 2024 & Rashid vs Republic E040 of 2024.

The ODPP through Ms Tum objected to reduction of Bail & Bond Ksh 50,000/- being too low to be able to ensure Accused person's attendance in Court. The Accused's alleged medical condition was not proved by medical evidence.

30. I have perused the Notice of Motion dated 26/5/2025 and the following medical documents are attached;

- a) Nairobi Remand & Allocation Prison Medical Facility and on presentation the Accused person was treated for chest infection and gastro intestinal disorder he had chest pains productive cough running nose and nausea.
- b) On 12/8/2023 he visited the clinic with difficulty in breathing releasing blood from the nose, movement restriction, dizziness and epigastric pains forcing transfer to Mbagathi Hospital
- c) Since then, he has been in and out of Sick Bay D4 where he is currently housed.

- d) Treatment Notes from Avenue Healthcare Greenspan Medical Centre of 5/9/2023
- e) Mbagathi Hospital Laboratory Report of 12/8/2023
- f) Kenyatta National Hospital Report of 14/8/2023
- g) Nairobi City County Mbagathi Hospital Laboratory Report.

31. In **Republic v Diana Suleiman Said and Another [2014] eKLR**, Hon. Muriithi J observed;

“The changed circumstances test is one of a 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”

32. The instant application discloses changed circumstances with regard to the Applicant's/Accused

person's medical condition that has affected his well-being. The continuing stay in custody without proper medical attention will increase his ill health. The medical documents presented disclose medical assistance availed so far and requirement of further medical assistance.

DISPOSITION

33. This Court finds that the reasons advanced to vary review and consider reasonable bail and bond terms are based mainly on the Applicant's medical history depicted by the official medical records presented.

34. Therefore, the Court grants the Accused person bond bail as follows;

- a) Bond of Ksh 100,000/- with surety of similar amount**
- b) Cash bail Ksh 50,000/- on condition there is also Contact person/sister or other relative with valid National Identity Card and Payslip or Chief's letter.**

35. The Accused person shall observe the following terms;

- a) **The Accused person will not to interfere with witnesses/victims,**
- b) **The Accused person will not tamper with evidence,**
- c) **The Accused person will not to leave jurisdiction of the Court,**
- d) **The Accused person will not commit an offence,**
- e) **The Accused person will attend Court on all dates.**

36. Upon release, the Accused person to obtain medical care

Further mention on 24/11/2025.

**DATED SIGNED & DELIVERED IN OPEN COURT
AT CRIMINAL DIVISION HIGH COURT NAIROBI**

ON 30/10/2025

**M.W.MUIGAI
JUDGE**

Ms Nganga for the Applicant /Accused person

Ms Tum ODPP.

ORIGINAL