



**Republic v Chayo alias Denis Wafgan (Criminal Case E046 of 2024)
[2025] KEHC 15099 (KLR) (Crim) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E046 OF 2024
AM MUTETI, J
OCTOBER 22, 2025**

BETWEEN

REPUBLIC RESPONDENT

AND

DENIS ABIOLA CHAYO ALIAS DENIS WAFGAN ACCUSED

RULING

1. The accused person in this matter has applied to have this court reconsider its position on the issue of bail and admit him to bail on reasonable terms.
2. The applicant has moved the court under Article 49(1)(h) of *the Constitution* 3. The applicant relied on the grounds set out to the face of the motion to wit;-
 - a). That the Accused, Denis Abiola Chayo alias Denis Wafgan, is currently in custody and is being held at Industrial Area Remand and Allocation Prison, pending hearing of the case.
 - b). That the continued detention of the Accused without bail is causing him undue emotional, psychological, and physical hardship.
 - c). That under Article 49(1)(h) of *the Constitution* of Kenya, every arrested person has the right to be released on bond or bail, on reasonable conditions, unless there are compelling reasons not to be released; no such compelling reasons have been advanced in the present matter.
 - d). That he is not a flight risk. He has a known fixed place of abode, strong family ties within the jurisdiction, and is willing to abide by any conditions this Honourable Court may impose for his release.



- e). That the Accused undertakes not to interfere with prosecution witnesses, investigations, or the trial process and that he is ready to submit to any conditions necessary to secure the ends of justice.
 - f). That there are no allegations or evidence that the Accused has attempted or intends to abscond or frustrate the course of justice.
 - g). That the Accused is presumed innocent until proven guilty, as guaranteed by Article 50(2) (a) of *the Constitution*, and his continued detention without justifiable cause offends this fundamental principle.
 - h). That his continued pretrial detention amounts to an unjustified limitation of his constitutional rights and freedoms, including the right to liberty, dignity, and a fair trial.
 - i). That further, the hearing date is unreasonably far and compounds the prejudice suffered due to his continued detention.
 - j). That Article 50(2)(e) of *the Constitution* guarantees the right to have a trial begin and conclude without unreasonable delay;
 - k). That it is in the interests of justice and fairness that the Accused be given an early hearing date and granted bail or bond pending trial on terms that this Honourable Court may deem fit and just.
3. The accused person further relied on his affidavit in which he deposed as follows;-

- “ 1. That I am the Accused person herein, charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, Cap 63, Laws of Kenya, and I am therefore competent to swear this affidavit in support of my application.
- 2. That I am currently in custody at Industrial Area Remand and Allocation Prison, awaiting trial.
- 3. That my trial is scheduled for 21 October 2025, a date far off, resulting in prolonged and undue hardship in custody.
- 4. That my continued detention without bail is causing me emotional, psychological, and physical hardship, and has adversely affected my wellbeing.
- 5. That I am advised by my advocate, which advice I verily believe to be sound, that under Article 49(1)(h) of *the Constitution* of Kenya, I have a right to be released on bond or bail on reasonable conditions unless there are compelling reasons not to be released.

No such compelling reasons have been brought to my attention or presented in court.
- 6. That I am not a flight risk. I have a fixed place of abode, reside within the jurisdiction of this Honourable Court, and have strong family and community ties.
- 7. That I undertake not to interfere with any witnesses, investigations, or the trial process, and I am prepared to comply fully with any bail conditions that may be imposed by this Honourable Court.



8. That there is no allegation or evidence that I have attempted or intend to abscond, obstruct justice, or otherwise prejudice the integrity of the judicial process.
 9. That I am presumed innocent until proven guilty in accordance with Article 50(2)(a) of *the Constitution*, and it is unjust to keep me in pre-trial custody without sufficient justification.
 10. That my continued detention without compelling reasons amounts to an unjustified limitation of my fundamental rights and freedoms, including the right to liberty, dignity, and a speedy fair trial.
 11. That I am advised by my advocate, which advice I verily believe to be true, that under Article 50(2)(e) of *the Constitution* of Kenya, I have the right to have my trial begin and conclude without unreasonable delay. The scheduled trial date of 21st October 2025 constitutes an unreasonable delay in the circumstances.
 12. That I am ready and willing to attend court at all times as may be required and to comply with any conditions this Honourable Court may impose in the interests of justice.
 13. That I make this Affidavit in support of my application for bail pending trial, and to urge this Honourable Court to exercise its discretion in my favour.
4. The state has vehemently opposed the application citing the fact that there has been no change of circumstances to warrant this court's review of its earlier orders.
 5. The law on review of bail is that the accused person must be able to demonstrate that there has been a change of circumstances since the earlier decision by the trial court declining to grant him bail.
 6. The applicant should be able to demonstrate through actual and tangible evidence that the circumstances obtaining at the moment he seeks the review of bail, that he is not a flight risk and that circumstances have since changed.
 7. This court in *Mohammed v Republic (Criminal Miscellaneous Application E156 of 2022) [2025] KEHC 5324 (KLR) (Crim) (29 April 2025) (Ruling)* held that:

“The law on release of accused persons on Bail is that the court can review bail terms at any stage if there are change of circumstances necessitating such review. However, the applicant must be able to demonstrate that indeed circumstances have changed to merit such a review. See *Rep. v Diana Salim Suleiman (2014) eKLR* It is not enough for the applicant to present a case of review of bail urging the court to consider that there is change of circumstances and fail to provide supporting evidence that indeed that is the situation.”
 8. Further, in *Duale & another v Republic (Miscellaneous Criminal Application E005 of 2023) [2023] KEHC 19634 (KLR) (26 June 2023) (Ruling) Onyiego J.* held:

“The application is seeking review of the ruling made on 19th May,2022, on grounds that; circumstances have since changed; that the applicants were not a flight risk and that, they were sole breadwinners to their families. In its ruling, the court did address those grounds. The same was again canvassed vide application dated 14th June,2022 which again was dismissed. It is trite law that for a court to review its orders in a Criminal case, the applicant



must demonstrate change of circumstances. In this case, I do not find material change in circumstances. How has the issue of being a flight risk changed? Perhaps the issue of their security may have changed but the critical ground of being a flight risk still remains."

8. The applicant in the instant case has basically regurgitated the grounds that he is not a flight risk and that he has a fixed abode making him suitable for the grant of bail. He has not demonstrated in what way the situation has changed since the time the court pronounced itself on the issue of bail in this matter.
9. The applicant has failed to demonstrate any new matter worthy of consideration and therefore this court is inclined to uphold its earlier ruling on bail since the court had already considered the issue of the applicant being a flight risk and that there is no evidence presented to indicate that that is no longer the case.
10. The accused person's case shall be accorded the necessary attention to ensure that the trial is expeditiously conducted and the prosecution is advised to ensure that witnesses are bonded without fail to ensure that whenever the matter comes up for hearing, the same proceeds without a hitch.
11. The upshot of the above, is that this court finds no reason to interfere with its earlier ruling on the issue of bail. The request for bail review is therefore rejected.
12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF OCTOBER 2025.

A. M. MUTETI

JUDGE.

In the presence of:

Habiba: Court Assistant

Ms Njoroge /Dela for the State

Kimathi for Accused

