

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**MISCELLANEOUS CRIMINAL APPLICATION No. E130 OF 2024**

**TITUS KIPKEMOI CHERUIYOT.....APPLICANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**RULING**

1. By way of Notice of Motion dated 6<sup>th</sup> December 2024, the Applicant seeks the following orders;

1) That, this Honourable court do call for Eldoret CMCRC No. E705 for 2024 Republic versus Titus Kipkemoi Cheruiyot coming up in court on 17<sup>th</sup> March 2025 for purposes of review and issuance of bond/bail to the accused.

2) That the ruling of the Chief Magistrate’s court made on 13<sup>th</sup> May 2024 in Criminal case no E705 of 2024 denying the applicant/accused cash bail and bond be revised and/or reviewed.

3) The applicant be granted reasonable bond terms with an alternative of cash bail in respect of Eldoret Chief Magistrate court Criminal case No E705 of 2024.

2. The Application is expressed to be brought under **Article 25(c), 49 (1) (h), 50(1), 165(6), (7), 259(1) of the Constitution of Kenya, Sections 362 and 364(1)(b) & (2), Section 124 of the Criminal Procedure Code** and all other enabling provisions of the law and is premised on the grounds on the face of

it and the averments of the applicant in the affidavit in support of the application.

3. The Applicant depones that the Chief Magistrates Court, in its Ruling made on the 13<sup>th</sup> May 2024, denied him a release on cash bail /bond. That the reasons advanced for arriving at the said decision were that the probation report had indicated that the Accused person poses danger to the complainants and bond was denied on grounds of the adverse report.
4. He deponed that he was charged with the offence with the offence of Grievous Harm contrary to **Section 234 of the Penal Code** and is a 52-year-old citizen who is sickly. Additionally, that no compelling reasons were advanced to the trial court to warrant denial of cash bail and the Applicant is likely to suffer extensive health damage and mental deterioration if he continues to languish in prison. He urged that the application is made in good faith and prayed that the same be allowed.

#### **Applicants' Submissions**

5. Counsel for the Applicant filed submissions dated 1<sup>st</sup> July 2025 and urged that the revisional jurisdiction of this court is donated by **Section 362 of the Criminal Procedure Code** and further, that it is clear that the court can only revise orders or decisions of the lower court if it is satisfied that the decision, order, or finding is tainted with illegality, errors of law, or impropriety or that there was an irregularity in the proceedings that gave rise to the impugned order, finding or decision.
6. The trial court's record shows that the accused is charged with the offence of grievous harm and assault, he took a plea of not guilty and applied to be released on bail. The trial court heard an application for bail pending trial. On

6<sup>th</sup> May 2024, a pre-bail report was filed citing that the accused person poses danger to the complainant. That the reason for the denial of bail was that the accused person was represented by a person who had not taken out a practicing certificate and did not qualify to practice as well as the concern raised in the pre-bail report.

7. Counsel urged that the Constitution specifically requires, under **Article 49 (1) (h)** that the terms of bail to be attached to an accused who is released on bail shall be reasonable. Besides the exceptions limiting the right to bail under **Section 123A of the Criminal Procedure Code, Article 49(1)(h)** places the burden of proof on the state to demonstrate compelling reasons. In determining whether the interest of justice dictates the exercise of discretion under **Article 49(1)(h) of the Constitution**, the courts are to be guided by the provisions of **Section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya**. He urged that in the **Bail and Bond Policy Guidelines**, it is restated as a general guideline in **Paragraph 4.9** that:

*"In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the Constitution of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.*

8. Counsel urged that by dint of **Article 50(2) of the Constitution**, every accused person is entitled to the presumption of innocence. Hence, in the **Bail and Bond Policy Guidelines**, it is recommended that the presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial

detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management.

9. Counsel for the Applicant pointed out that from the record of the trial court, the prosecution, through an affidavit to oppose bond sworn by CPL George Odhiambo, averred that the applicant, who is a Tanzanian citizen, arrived in Kenya on a tourist visa and was living in a hotel before his arrest. It was further contended that the Applicant lacked a permanent fixed abode and was therefore a flight risk and therefore unlikely to turn up for trial, which was the main reason given by the Court.
10. He further stated that in the present Application, the main concern of this court is whether the Applicant will attend court if he is released on bail pending trial. That fact that he is innocent until proven guilty by a Court of competent jurisdiction is without doubt. Counsel urged that the court in the circumstances should allow the Application as prayed and release the accused person on reasonable bond terms.

### **Respondents' Submissions**

11. The State, through prosecution Counsel S.G Thuo, opposed the Application and fully associated with the sentiments of the investigating Officer Cpl George Odhiambo in his affidavit in opposition of bond to the Applicant. Counsel cited the case of **Wanjema vs R [1971] EA 493** which provides the general rule for interference with the discretion of the trial court. He urged that **Article 49(1)(h) of the Constitution** provides that an arrested person has the right to be released on bond or bail on reasonable conditions pending a plea or trial, unless there are compelling reasons not to be released.

12. He placed reliance on the holding of **Mutuku J in R vs William Kipkorir Kipchirchir & Anor [2018] eKLR** and the holding of **Mrima J in R vs Sifuna (2023) KEHC 22379 (KLR)** where he added his thoughts on compelling reasons to opine that the likelihood that an accused person may abscond because of the seriousness of the offence and strong evidence against him is a compelling reason to warrant denial of bond.

13. Counsel urged that the Applicant faces a serious offence of assault occasioning grievous harm contrary to **Section 234 of the Penal Code** which attracts a life sentence. That the matter has substantially proceeded before the trial court with all indications of a reasonable prospect of a conviction for life imprisonment given the strength of the prosecution's case. He urged that the **Criminal Procedure Bench Book at pgs. 48-51 par 105** adds its contribution to compelling reasons to include the likelihood that an accused person will fail to attend court.

14. Counsel posed the question 'What is more compelling not to attend court than a person bearing Kenyan local names bearing a Tanzanian Passport purporting to travel to Kenya on a tourist visa?'. Counsel urged that they are alive to the dicta in **R v Nuseiba Mohammed Haji Osman [2018] eKLR** that denial of a constitutional right is not a matter to be treated lightly, and that any claims made against an accused person aimed at curtailing the constitutional right to liberty must not be made on speculation or conjecture.

15. Counsel submitted that the Applicant has not rebutted the Respondents' claim under oath that he is a flight risk and has no known fixed place of abode in Kenya. He urged that **Section 123A(1) of the Criminal Procedure Code Act** outlines that in making a decision on bail and bond a court shall have regard to all relevant circumstances as was done in the present case. He

placed reliance on the case of **Ndirangu vs Republic Eldoret HCCRCE014 of 2024 (2024) eKLR [2024]** and maintained that the Applicant has not demonstrated that the circumstances that led to his denial of bond/bail have since changed and hence his application must fail.

### **Determination**

**16.** Having addressed my mind to the pleadings and the submissions, it is my considered opinion that the following issue arises for determination;

#### **Whether the court should review the trial court's Ruling on bond**

**17.** The Revisionary jurisdiction of the High Court is governed by **Section 362 of the Criminal Procedure Code** which provides that:

**“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.”**

**18.** Article 49(h) of the Constitution provides on the Right to Bail;

**“(1) 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.”**

**19. Section 123(3) of the Criminal Procedure Code** gives this court a wide and unfettered discretion to revise the decision of the subordinate court in regard to bond and provides that: -

**“The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.”**

**20. Further, Section 123A of the Criminal Procedure Rules** which provides: -

**“(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 the relevant circumstances and in particular—**

- (a) the nature or 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.”**

21. In **Republic v Pascal Ochieng Lawrence [2014] eKLR** the court set out the parameters guiding a court in exercising its discretion in an application for bond and where the court held that: -

**“It is to be noted that unlike in the past when an accused person had to demonstrate why he should be released on bail/bond, that duty now properly belongs to the state. The court in exercising its discretion as to whether or not to grant bond is however to be guided by the following parameters: -**

**The seriousness of the offence although this carried greater weight under the old constitutional dispensation;**

**The weight of the evidence so far adduced if the case is partly heard;**

**The possibility of the accused interfering with witnesses;**

**The safety and protection of the accused once he/she is released on bail/bond;**

**Whether the accused will turn up for trial;**

**Whether the release of the accused will jeopardize the security of the community.”**

22. In the instant case, The Applicant had applied for a review of the bail and bond terms before the trial court and the court denied him bail on the basis that the probation report indicated that he had threatened the complainants as is stated in the said Ruling. This assertion was not contradicted and/or denied by the Applicant who instead submitted to this the court that the main reason that bail was denied was that he was represented by Counsel who had not taken out a practicing certificate.

23. I have noted from the Ruling of the trial court that the lack of a practising certificate by the Advocate was a side issue and apart from the main reason for the denial of bond and such that even as the court struck out the application on this basis, it proceeded to make a determination on the merits of the case.

24. Further, to the above, the court notes that it has been alleged by the State that the Applicant has Kenyan local names, is bearing a Tanzanian Passport and is purporting to travel to Kenya on a tourist visa. That given these circumstances, the Applicant has no fixed abode in Kenya and in this regard, he is a flight risk. I note that that this assertion too has not at all been denied, contradicted and/or rebutted by the Applicant.

25. All factors considered then, I find the two assertions made against the Applicant by the prosecution *to wit*, that he has threatened the witnesses, which witnesses the court notes are his mother and sister who are close relatives and that he is a foreigner with no fixed abode, to be sufficiently compelling to warrant the denial of bond to the Applicant.

26. The fact of the close proximity of the complainants to the accused means that they stand threatened even after testifying hence making this allegation even more compelling. In this regard, I am satisfied that the Application seeking for the review of the trial court denying the Applicant bond lacks merit and the same is accordingly dismissed. Right of Appeal 14 days

**Read dated and Signed at ELDORET on 12<sup>th</sup> March 2026**

**E. OMINDE**

**JUDGE**