

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKADARA
CRIMINAL DIVISION
MISC. CRIMINAL APPLICATION NO E144 OF 2025
PASCALINE PETER alias PASSY MA TREVOR.
APPLICANT
GEORGE MUTUA MUTUNGA ALIAS IMRAN.....
APPLICANT

VERSUS

REPUBLIC
RESPONDENT
(Being application to set aside a ruling of the Chief
Magistrate Court at Makadara Criminal case no
E5489 of 2024) -

RULING

1. By a notice of motion under certificate of urgency dated 10th July 2025, the applicants moved the court for the following orders:
 - a) That the honourable court be pleased to set aside the ruling dated 2nd July 2025 and vary the bail terms granted on the 27th June 2025 on the grounds that they are excessive and beyond the financial reach of the applicants.
 - b) That the honourable court be pleased to substitute the cash bail with more favourable terms/amounts, including but not limited to personal bond with surety
 - c) That the 1st accused/applicant be directed to report to the DCI office at Kasarani twice a month as a requirement attached to the revised favourable and or lenient bail/bond terms.
 - d) That the honourable court be pleased to admit the 1st accused/applicant to a bond of kshs 5,000,000 with one surety.

2. The application was grounded on the ground that the trial court granted the 1st accused/applicant bail/bond on terms of Kshs. 30,000,000/= and cash Kshs. 60,000,0000/= with three sureties of similar amount which terms were excessive and has made it hard for the 1st applicant to attain.
3. That the applicant was a law-abiding citizen with a fixed a bode at Kantafu-Kagundo Road within Machakos County and with a strong family ties who was not a flight risk her passport having been deposited in court noting that for the last nine months the same has been unable to raise the bail terms and further that her accounts are frozen therefore she can only raise a bond of Kshs. 5,000,000/=
4. The application was supported by her affidavit in which she deposed that she was currently undergoing treatment for HIV a lifelong condition which requires her to be in a balanced diet and adequate meal supply throughout, which cannot be provided for at the remand facilities.
5. It was deposed that as sign of goodwill confidence and commitment to fulfil her civil obligations that was owing, she had given documents of her motor vehicles to some of the claimants to hold as a lien, some of which has been handed over to the investigating officer which as made it hard to raise the terms pf bond bai.

6. In response to the application, the respondent filed grounds of opposition in which it was stated that:
- a) That the trial court set out bail terms guided by the bail and bond policy
 - b) That the applicant had not demonstrated to the trial court that she is unable to meet the bond terms and pray for review of the terms before the trial court
 - c) That nothing had been placed before the court to show that the honourable Magistrate acted in bad faith or erred in law by granting the applicants those bail terms.
7. The applicant filed written submissions on the application in which it was stated that the applicant was charged 81 counts of carrying out business as collective investment scheme without a licence contrary to section 23(2) as read with section 34(2) of the capital market authority on count one , in count 2 conspiracy to defraud contrary to section 317 of the penal code and in count 3- 81 obtaining money by false pretence contrary to section 313 of the penal code having been detained for a period of eight weeks and that when the applicant made first application for bond the court disallowed the same .
8. That the applicant made an application for review on 2nd November 2024 and that by a ruling dated 13th November 2024 the court declined to review terms for the 1st applicant but allowed application for review in favour of the 2nd applicant.

9. It was contended that under Article 49(1) (h) of the Constitution arrested person has a right to bail unless there are compelling reasons not to be released which provision is also provided for under section 123 of the Criminal Procedure Code which at sub section 3 thereof provides that the high court may in any case direct that an accused person be admitted to bail or that the bail required by the subordinate court or police be reduced.
10. It was submitted that in the case of Stack v Boyle U.S 1.3.1951 the Supreme Court of the United States of America had this to say “ the court provided guidelines in assessing whether bail is excessive starting from the premises that the traditional right to freedom before conviction permits the unhampered preparation of a defence and serves to prevent the infliction of punishment prior to conviction
11. That in the case of Cyril Kipruto Serem versus Republic [2020] eKLR the court stated that reasonable terms of bail, the Court is required to observe the statutory injunction in section 123(2) of the Criminal Procedure Code that the amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive. The rationale for this rule is elaborated in the Kenya judiciary criminal procedure bench book at paragraph 109. courts must ensure bail conditions are reasonable and not excessive as this would lead to de facto imprisonment and amount to a violation of Article 49(2) . what is reasonable should be

determined in light of the facts and circumstances of each case (Republic versus Taiko Kitende Muinya ...)

12. It was contended that as per the Bail and Bond Policy Guidelines the bail and bond terms must be reasonable and shall be no more than to guarantee the appearance of an accused person in court for the trial. It was therefore contended that the bail terms given by the trial court were excessive and untenable by the applicant which amounted to constructive denial of bail .
13. Mr. Nyambega for the applicant submitted that the bail terms for the applicants co-accused were reviewed while the applicant was denied the benefit of review yet the applicant was of lower means who was engaged in the shylock business and that the charges before the lower court arose from the said business which should have been a subject of civil proceedings. It was submitted further that the applicant suffers from HIV which requires specialized diet.
14. On behalf of the respondent, Ms Kariuki made oral submissions and stated that the applicant has been charged with over ten counts of obtains money by false pretence from different complainants and that the sums of money are large and that the fact that the applicants co-accused bond has been reviewed is not material as each party is treated differently. It was submitted that the applicant had not indicated that her health can not be managed from the prison.

DETERMINATION

15. In this cause the applicant has been granted bond and therefore the issue of compelling reasons does not arise. The only issue for courts determination is whether the bond terms granted by the trial court are unreasonable so as to be interfered with by this court on revision .
16. It is not in dispute that the applicants co-accused found favour with the court which reviewed the bond terms granted to the same arising from the same charge contrary to the provisions of article 27(1)and (2) of the constitution which grantees equal protection and benefit of the law .
17. I have perused the lower court file herein and in particular the charge sheet and noted that from count 3 to 20 thereof the total amount allegedly obtained totals to Kshs. 23,480,000/= (Twenty-Three Million Four Hundred and Eighty Thousand) against a cash bail of Kenya Shillings Thirty Million or bond of Kenya Shillings Sixty Million which the trial court considered very reasonable.
18. The purpose of bonds has always been and continue to be to secure the attendance of an accused person to court as per the provisions of Section 123 of the Criminal Procedure Code and as I have stated before, there is no scientific formula for arriving at a figure which will make is safe for the accused to attend court.

19. In this matter the case has substantially been heard by the trial court and therefore the same is best placed to know the strength of the prosecution case at the stage of proceedings and as to whether there will be temptation on the part of the accused to abscond should the same be released on bond but having noted that the second accused bond terms were substantial reduced and no reason was given by the trial court for the said reduction and as to why the applicant herein did not benefit from the same save that the court stated that the bonds terms granted to her were reasonable, I find that the applicant was not granted equal protection and treatment and as such the decision of the trial court was not reasonable.

20. Having considered the affidavit in support of the application and the sums of monies involved and noting that the second accused bond was reduced to Kenya Shillings Two Million from Kenya shillings Ten Million and cash bail to Kenya shillings One Million from Kenya shillings Five Million, I will allow the application herein and reduce the terms as follows:

- a) Bond of Kenya Shillings Thirty Million (Kshs 30,000,000/=) together with two sureties of similar amount
- b) Alternative cash bail of Kenya shillings ten million (kshs 10,000,000) with one recognized Kenyan citizen.
- c) All the other terms issued by the court to remain.

21. And it is ordered.

**DATED SIGNED AND DELIVERED THIS 12th DAY OF MARCH
2026**

**J. WAKIAGA
JUDGE**

In the presence of:-

MAKADARA MISC. CRIMINAL APPLICATION NO E144 OF 2025 RULING