

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT THIKA  
CRIMINAL REVISION NUMBER E043 OF 2025

STEPHEN MUHIA MACHARIA.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT  
*(Being revision from ruling and orders in the Chief Magistrate's Court at  
Thika (Hon. Yusuf Barasa Mukhula PM) in criminal case number E3397 of  
2024 dated 29-06-2025)*

**RULING**

Vide an undated letter filed in this court on 10-06-2025, the applicant has asked this court to call for the record of the Thika Chief Magistrate's court criminal case number E3397 of 2024 for examination and satisfaction of the correctness, legality and propriety of the ruling delivered by Hon. Yusuf Barasa Mukhula on 29<sup>th</sup> May 2025 in which the court declined to revise the previously granted bail and bond terms.

In the matter, the applicant was charged with stealing Kshs 6,000,000.00 from one Muthoni Gichohi contrary to section 268(1) as read with section 275 of the Penal Code. He also faced a second count of conspiracy to commit a felony jointly with one John Mwangi Wanjiku and a third count of money laundering jointly with one Charity Nyambura Kariuki.

The applicant was released on bond of Kshs 2,000,000.00 or cash bail of Kshs 1,000,000.00 on 20-03-2025 and on 8-04-2025, he made an oral application for

review of the bond terms which was declined through ruling delivered on 29-05-2025 which ruling is the subject of this revision.

I have read the lower court's record, the submissions of the applicant dated 14-08-2025 and those of the respondent dated 2-09-2025. The applicant argues that the bond and bail terms were excessive and not commensurate to the charges he was facing which has resulted to him remaining in custody since November 2024 since he cannot afford to raise them. He submits that the fact that he has been in remand for that period is proof that the terms were beyond his means and adds that any bond terms that are unattainable are in effect a violation of the rights of an accused person as guaranteed under Article 49(1)(f) and (h) of the Constitution.

The applicant has pointed out that a second probation report filed in the trial court recommended that the bond terms be reviewed downwards as he had no history of absconding and that his family was undergoing hardships due to his continued detention. The applicant adds that his co-accused persons were granted bail terms of Kshs 50,000.00 and Kshs 100,000.00 and this obvious disparity underscored the punitive nature of the bail terms imposed upon him.

On the other hand, the respondent maintains that the terms were reasonable considering the nature and seriousness of the offence the applicant is facing. It has urged the court to consider that setting terms of bail and bond terms is at the discretion of the trial court and in its opinion, the terms granted to the applicant were commensurate with the charges. The respondent adds that, the judiciary bail and bond guidelines provide for parameters that should assist court in exercising its discretion in granting bail and in its opinion, those guidelines were considered by the trial court.

It is true that the position in law is that bond and bail terms are at the discretion of the trial court. It is also true that a court must exercise its discretion judiciously and not whimsically or capriciously. This means that the court in exercising its discretion must be guided by the established legal principles and the law and must show accountability for the decision with intention of doing justice to the parties.

The applicant has claimed that his co-accused were granted favourable bond terms unlike him. The applicant has a reason to hold such an opinion because in my view, a court should not give manifestly different bond and bail terms to accused persons who are facing similar charges. All the persons facing the same charge must be treated equally unless there are special circumstances which would dictate otherwise. If a court were to treat one of the accused persons with terms more favourable than the other, it would smother of injudicious decision and may be interpreted as discrimination.

In this case however, the applicant was facing three counts unlike his co-accused persons. The 2<sup>nd</sup> accused who had one count of conspiracy to commit a felony together with the applicant was granted bond of Kshs 50,000.00 while the 3<sup>rd</sup> accused who faced one count of money laundering together with the applicant was released on bond of 500,000.00 or cash bail of Kshs 100,000.00.

In declining to review the bond terms, the court stated in the ruling sought to be revised that;

*‘It would be prudent to wait until the complainant testifies before any application for review of the bond terms can be entertained. The application for review of the bond terms is hereby declined at this stage.’*

My interpretation of the above is that, the court was in effect saying that the applicant should remain in custody until the complainant testified. Stating so without cancelling the already given bond terms was in my view illogical because, if somehow, the applicant managed to secure resources to meet the earlier bond terms before the complainant testified, would the court have declined to approve his release because of that? This expanded further would mean that the court acknowledged that the bond terms were high and unaffordable to the applicant but it still went on to maintain them which effectively meant that the applicant was denied bond until the complainant testified.

The trial court also stated that it had taken into consideration the concerns raised by the complainant which was well captured in the affidavit sworn by the investigating officer and also in the pre-bail report. I have read the affidavit and the two pre-bail reports concerning the applicant dated 23-01-2025 and 7-05-2025. In my view, concerns raised by the complaint and the probation officer's reports are relevant points of consideration but they cannot bind the court. The court must make a proper inquiry and apply its mind to the accused person's right to bail and the circumstances of the case. Honourable Justice R. Nyakundi held in ***Kirit Bhangwanda Kanabar v Director of Public Prosecutions & another [2018] KEHC 1610 (KLR)***, that;

*'To me it is just appropriate to say that trial courts when considering a person's suitability to be released on bond should remember that they are guardians and gatekeepers of the constitution. From the wording of Article 49(h) of the constitution and inquiry among other matters as to the financial resources and suitability of the person for whom he/she proposes to stand surety, should be evidentially proven before imposing the bail terms. The concepts to be released on reasonable conditions*

*should be accorded the ordinary meaning to give effect to the purposeful interpretation of the constitution.’*

Further, I hold the opinion that the right to bail does not depend on the views of the complainant or the probation officer only. The court must go further and consider the rights of the accused person and balance the same with the circumstances and concerns of the victim. If the concerns of the victim are in such a way that she would need court’s protection, the court should look for modalities on how the concerns will be taken care of without keeping the accused in custody by for instance imposing appropriate conditions. It must be remembered that the accused person is presumed innocent until the contrary is proved and any bond terms which seems to be punitive or intended to ensure that the accused remains in custody are unconstitutional.

The aforesaid language of the trial court’s ruling closed possibility of the applicant applying for review of the bond terms until the complainant testified. This is an order which is open to abuse by the complainant and the prosecution. Unless there are special or exemptional circumstances, which I do not see in this case, the timing of the complainant’s testimony should not be a bar or point of consideration while a court is considering whether or not to grant bail. The primary purpose of setting bail and bond terms is to ensure that the accused is bound and shall be available to attend the hearing.

The first pre-bail report filed in court raised concern of the victim’s security and recommended that the applicant be denied bond. However, the court granted bond despite the recommendation. I therefore find it a contradiction for the court to use the same reasons of the victim’s security concerns to decline the subsequent ruling on application for review. That said, I do not find any basis in the court’s holding on that issue.

The affidavit in opposition to the bond alleged that the applicant and his co-accused were overheard by other prisoners while in custody plotting on how to rob and kill the complainant's husband once they were released. The investigating officer also alleged that there were messages sent to him and the complainant's husband which bordered on intentions or plans of harming them. These messages were sent from a line which is disclosed in the said affidavit. The threats were not investigated neither was the disclosed line linked to the applicant. There was no evidence that the applicant had planned any robbery or harm on the complainant and her husband.

I also note that the second probation officer's report recommended downward review of the bond but the court did not consider the recommendations. Although such recommendations are not binding on the court, it is necessary that where the court is disagreeing with them, it should give reasons for such. Otherwise, there would be no need to call for the reports if the court does not give due consideration to them.

The only count which the applicant faced alone was stealing whose maximum punishment is jail term of three years. The applicant was accused of stealing Kshs 6,000,000.00 which may appear to be substantial noting he was said to have been the complainant's domestic worker. Although the amount involved in a case may be an integral part of the charge, it is the seriousness of the offence and the possible penalty that should be a relevant factor of consideration in setting bond terms. In ***Kirit Bhangwanda Kanabar v Director of Public Prosecutions & another (supra)*** it was held that;

*'In my view, the seriousness of the offence should not be seen from an eye of the quantum or liquidated amount stated to be defrauded or stolen but*

*the nature and gravity of the offence should be in line with prescribed penal provisions and probable sentence on conviction.*

*It is important to distinguish between the nature of the offence as a category and the seriousness of it as attached by the legislature in its various cluster of punishment in default.'*

In my view, considering the terms of the bond granted to the other accused persons and putting into account the fact that the applicant faced the count of stealing alone, the applicant's bond terms were punitive. The appellant had shown his incapability of meeting the set bond terms and, in my opinion, there were no compelling reasons to justify such high terms. Setting high bond terms which an accused person cannot meet amounted to denial of bond. I am persuaded by holding of Honourable Justice J.B. Bwonongwa in ***Rasto & 5 others v Republic [2022] KEHC 15663 (KLR)*** where he held that;

*'It serves no purpose to recognize the right of an accused person to be released on bail, and in the same breath impose terms that are beyond the ability of the accused; which would in effect amount to taking away that right. That was why it is within the liberty of the court to seek information to assist in making informed decisions.'*

In the premises, I find merits in the applicant's grievances and I hereby set aside the ruling dated 29-05-2025 and I substitute it with the following orders;

1. The applicant shall be released on bond of Kshs 500,000.00 with one surety of the same amount or cash bail of Kshs 300,000.00.
2. The applicant shall not approach, visit or in any way make contact with the complainant or her family members.

3. The applicant shall not approach, visit or in any way make contact with any of the witnesses in the matter until it is concluded.
4. The trial court shall be at liberty to review the bond terms further (but not upwards) depending on the prevailing circumstances.
5. In the event that the applicant shall breach any of the above conditions, the trial court shall be at liberty to deal appropriately.

Dated signed and delivered at Nairobi this 25<sup>th</sup> day of March 2026.

**B.M. MUSYOKI**  
**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Mr. Mwangi for the applicant and Miss Torosi for the respondent.