



**Gachango v Republic (Miscellaneous Criminal Application  
E212 of 2024) [2025] KEHC 344 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 344 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E212 OF 2024**

**DR KAVEDZA, J  
JANUARY 24, 2025**

**BETWEEN**

**FRANCIS MAINA GACHANGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant filed a Notice of Motion dated 20th December 2024, seeking revision of the trial court's ruling imposing excessive bail terms. The application is supported by an affidavit sworn on the same date by the applicant's advocate, Evans Ondieki.
2. The applicant faces multiple charges, including: operating a clandestine laboratory (contrary to section 5B(1)(a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act*, No. 4 of 1994); possession of precursor chemicals for producing narcotic drugs (contrary to section 4a(1)(A) of the same Act); two counts of forgery (contrary to section 345 as read with section 349 of the Penal Code); and conspiracy to commit an offence (contrary to section 4B(2) as read with section 4B(5) of the *Narcotic Drugs and Psychotropic Substances (Control) Act*).
3. The applicant pleaded not guilty and was granted cash bail of Kshs. 5 million with two sureties of the same amount. He contends that the bail is excessive and punitive, citing his role as a father, his health condition (high blood pressure), and the deterioration of his health since incarceration. He requests the court to grant proportionate bail/bond terms.
4. The application was canvassed by way of oral submissions. Mr. Ondieki in support of the application. In response, the respondent led by Mr. Mutuma did not oppose the application.
5. I have considered the application, the arguments made in support of the application, and the applicable law. For consideration is whether the orders sought should be reviewed.



6. In granting bail, the court must also ensure that bail or bond terms must not be excessive or unreasonable and should not be far greater than what is necessary to ensure or guarantee the accused person's appearance before the court. Where this is the case, it would be tantamount to a denial of bail, a right that is enshrined in the *Constitution* and the *Criminal Procedure Code* as outlined above. This position was expounded in the case of *Taiko Kitende Muinya* [2010] e-KLR.
7. The *Bail and Bond Policy Guidelines* on page 9 paragraph 3.1. (d) underpins the right to reasonable Bail and Bond terms. Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and consider the personal circumstances of the accused person. In the circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case. The above position has been enunciated in various decisions by the courts as in the case of *Andrew Young Otieno vs. Republic* (2017) eKLR.
8. In this case, the court found it fit to admit the applicant to a cash bail of Kshs. 5 million in addition to two sureties of similar amount. The inference is that he has been able to raise the bond terms granted. The purpose of bail/bond is to ensure the accused attends court. In addition, the pre-bail report on record further supports the applicant's case, indicating that he is of good character, has familial responsibilities, and is of limited financial means. Moreover, the community has not raised any objections to his release on bail, and there is no evidence to suggest that he poses a flight risk. His continued incarceration is therefore a good ground for a review of the bond terms.
9. In the upshot, the orders of the subordinate court issued on 19<sup>th</sup> December 2024 are hereby revised as follows:
  - i. The cash bail of Kshs. 5,000,000 in addition to two sureties imposed by the trial court on 19<sup>th</sup> December 2024 is substituted with a cash bail of Kshs. 500,000.
  - ii. In the alternative to order (i) above, the applicant is admitted to a bond of Kshs. 2,000,000 with one surety of similar amount.
  - iii. The applicant shall comply with the other bail terms issued by the trial court on 19<sup>th</sup> December 2024.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF JANUARY 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Applicant present

Mutuma for the Respondent

Kanyangi Court Assistant

