



**Imbwaga & another v Republic (Miscellaneous Criminal Application E037 of 2025) [2025] KEHC 1431 (KLR) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1431 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E037 OF 2025  
DR KAVEDZA, J  
FEBRUARY 25, 2025**

**BETWEEN**

**MOSES LIYAI IMBWAGA ..... 1<sup>ST</sup> APPLICANT**

**LATIF MOHAMMED DAWOOD ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicants, Moses Liyai Imbwaga and Latif Mohamed Dawood filed a Chamber Summons application pursuant to Sections 123(3), 362, and 364 of the *Criminal Procedure Code*, as well as Articles 49(1)(h), 50(1)(a), 156, and 165(b) of the *Constitution*, and all other enabling provisions of the law. They seek a review of the bond terms imposed by this Court.
2. The record indicates that this Court granted the Applicants bond on 20th December 2023. The bond terms were subsequently reviewed on 6th December 2024 and set at Kshs 8 million. The Applicants have been unable to meet this bond requirement and, two years after their arrest, they remain in custody.
3. Counsel for the Applicants, Mr. Done, submitted that this Court has previously varied the bond terms of their co-accused upon application. He urged the Court to exercise discretion and similarly vary the bond terms imposed on the Applicants.
4. The State Counsel did not oppose the application for bond review.
5. The issue to be determined is whether the terms of the bond/ bail set should be reviewed. This is not an application for revision but a variation of the bond terms set by this court. In the case of *Republic v Diana Suleiman Said & another* [2014] eKLR Muriithi J was of the view that the court does not



become functus officio on a first application for bond, that Section 123 of the [Criminal Procedure Code](#) (CPC) (as amended) following the [Constitution](#) of Kenya, 2010 makes bail available at all times.

6. In this case, the accused persons have remained in remand custody despite the variation of the initial bond terms which is proof that they cannot find a surety or raise the bail terms imposed. In the case of [Harish Mawjee & another v Republic](#) [2020] eKLR, it was stated that:

“... courts have sole discretion to give determinate bond terms and they can impose a combination of terms including supervision of accused released on bail if found necessary. Secondly, bond terms should not be arbitrary, but the court must consider the relevant factors affecting issuance of bond including penalty of offence and the accused ability to meet the bond terms. Thirdly, the bond terms should not be excessive or unreasonable. Fourthly, an accused has a right to seek review of bond terms from the trial court or high court or appeal.”(Emphasis added)

7. The court exercises this duty in furtherance of the provisions of Article 49 (1) (h) of the [Constitution](#) which provides that 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. Although the court can grant and /or review bond terms at any stage of the proceedings in furtherance of the accused’s constitutional right under Article 49 of the [Constitution](#), due regard should be given to the gravity of the offence.

8. Importantly, any bond terms granted by the court must be balanced against any injustice or prejudice that would likely be suffered by the society and/or the victim. It is trite law that that the paramount principle to be considered in granting bail, is to secure the attendance of the accused during trial. It’s for this reason that bail terms set should neither be so lenient as to entice the accused to abscond nor should they be so excessive to amount to ‘indirect’ denial.

9. In this case, this court already found that the applicants were eligible for bond. The court also found that they were not a flight risk and there were not a threats to the witnesses.

10. Section 123 (2) of the [Criminal Procedure Code](#) provides that:

The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive.

11. The Judiciary bail bond policy guidelines similarly provide that bond terms shall be reasonable. The accused persons face five counts of offences related to trafficking in narcotic drugs. Although bail terms must be reasonable to enable the accused person to comply and benefit from his constitutional right, the court must also not be seen to encourage absconding and thus interfere with the administration of justice.

12. The [Bail and Bond Policy Guidelines](#) on page 9 paragraph 3.1. (d) provides that:

“Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.



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 take into account 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.”

13. I find the holding in *Harish Mawjee & another v Republic (supra)*, relevant to the circumstances of this case. The applicants herein were arrested on 17<sup>th</sup> June 2023 and arraigned before the trial court where they were denied bail. Upon an application for revision before the High Court, they were granted bond. However, they have been unable to meet the bond terms set by the court hence, the application for review. It is my view that their inability to get out of prison despite having been granted bond, implies that they have been unable to raise the said bond. The changed circumstances in this case are that although the applicants have been granted bail, they have been unable to meet the terms.
14. I accordingly allow the application in the following terms:
  - a. The bond of Kshs 8 million granted by this court is reviewed to a bond of Kshs 3 million each.
  - b. The security shall be a fixed asset owned by a Kenyan citizen.
  - c. In the alternative to ‘a’ above, the applicants are each admitted to a cash bail of Kshs 1 million.
  - d. The applicants shall report to the investigating officer every month until the conclusion of the trial.
  - e. The applicants shall each provide a contact person (surety) who shall avail a copy of his/her National Identity Card, a passport photo, and a letter from the chief confirming that he/she has known applicants for a period of not less than two (2) years.
  - f. The applicant shall not leave the jurisdiction of this court until the matter is heard and determined and shall deposit their passports with the Deputy Registrar Kibera High Court for onward transmission to the Court Administrator JKIA Law Courts.
  - g. The bond terms imposed shall be approved by the trial court.

**RULING DATED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF FEBRUARY 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Mr. Mutuma for the state.

Mr. Dome for the applicant

Achode – Court assistant

