



Nesco v Republic (Criminal Case 53 of 2023) [2025] KEHC 4425 (KLR) (31 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4425 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 53 OF 2023
DR KAVEDZA, J
MARCH 31, 2025**

BETWEEN

SAMSON MORONGO NESCO ACCUSED

AND

REPUBLIC PROSECUTOR

RULING

1. The accused person Samson Morongo Nesco was charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code* cap 63 Laws of Kenya. The particulars are that on the 17th July at around 2100hours at Mitumba estate near Wilson Airport within Nairobi County jointly with others not before court murdered Stephen Mkangi Mwaisuga.
2. The accused applied for bail, and by a ruling dated 23rd January 2020, the trial judge granted bond of Kshs 1,000,000/= with one surety of the same amount. However, the accused has been unable to raise the required sum.
3. Counsel for the accused, Ms. Odembo, made an oral application for bond review, requesting the court to set reasonable terms. She argued that the accused is a family man with an eight-year-old daughter and that his wife's presence in court demonstrated he is not a flight risk.
4. The application was strongly opposed by Ms. Timoi for the State.
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] eKLR.



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 Otiemo v Republic* (2017) eKLR.
8. In this case, the court deemed it appropriate to grant the accused bond. It is evident that the accused has been unable to meet the bond conditions initially imposed, which constitutes a material change in circumstances. The primary objective of bail or bond is to secure the accused's attendance at trial. However, bond terms should not be so low that maybe an incentive for the accused to abscond. In determining the appropriate bond conditions, the court took into account the pre-bail report on record and the seriousness of the charges. Consequently, the accused was granted bond in the sum of Kshs 1,000,000/= in exercise of its discretion.
9. The upshot of the above analysis is that I decline to interfere with the decision of this court and dismiss the application for bond review.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 31ST DAY OF MARCH 2025

D. KAVEDZA

JUDGE

In the presence of:

Ms. Maina for the State

Ms. Odembo for the Accused

Tonny Court Assistant

