



**Abongo v Republic (Miscellaneous Criminal Application  
E016 of 2025) [2025] KEHC 4414 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4414 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
MISCELLANEOUS CRIMINAL APPLICATION E016 OF 2025**

**M THANDE, J  
MARCH 28, 2025**

**BETWEEN**

**NICHOLAS OTIENO ABONGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By his Application dated 24.2.25, the Applicant seeks that this Court admits him to bail on such terms as the Court may deem just and reasonable, pending the hearing and disposal of Kilifi Criminal Case No. E094 of 2025.
2. The Applicant asserts that the offence with which he is charged is bailable and that he is entitled to bond. Further that he has been denied bond without good reason by the trial court in its ruling of 13.2.25.
3. The Application is opposed by the Respondent, vide a replying affidavit sworn on 11.3.25 by No. 10XXXXXX PC Phenix Oduya Onyango, the investigating officer. He also exhibited the affidavit in opposition to bond sworn by PC Dennis Mutoka on 11.2.25. The averments are that the Applicant is facing multiple charges in Kilifi Criminal Cases Nos. E094 of 2025; 1E45 of 2024; E116 of 2025; E158 of 2023 and MCCR/20 of 2025. Under the Penal Code, he is charged with the offence of forgery, 2 counts of uttering a false document without authority, 3 counts of making a false document without authority, 2 counts of forgery of stamp, conspiracy to commit a felony and stealing. He is also charged with the offence of practicing as an advocate without authority contrary to Section 31(1) and Section 2(a) as read with Section 85 of the Advocates Act, rape contrary to Section 3(10) of the Sexual Offences Act and wilfully assaulting a police officer in due exercise of police duties contrary to Section 103(a) of the National Police Act.



4. The Respondent contended that while out on bond in these cases, the Applicant has continued to engage in criminal activity. The Respondent urged the Court declines to grant the Application.
5. The right to bond/bail is guaranteed under Article 49(1)(h) of the Constitution which provides:
  1. An arrested person has the right
    - h. to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
6. The Constitution has not defined “compelling reasons”. However, our courts have defined the term in various decisions. In Republic v Joktan Mayende & 3 others [2012] eKLR, Gikonyo, J. had this to say about compelling reasons:
 

And accordingly, the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the Constitution.
7. The right to bail/bond is not absolute. Where the court forms a strong opinion that the reasons given by the prosecution opposing bail/bond are forceful and convincing, the bail/bond will be denied.
8. Section 123A of the Criminal Procedure Code (CPC) provides for instances when bail/bond may be denied as follows:
  - (1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the court shall have regard to all the relevant circumstances and in particular -
    - (a) the nature and seriousness of the offence ;
    - (b) the character, antecedents, associations and community ties of the accused person;
    - (c) the defendant’s record in respect of the fulfillment of obligations under previous grants of bail; and;
    - (d) the strength of the evidence of having committed the offence.”
  - (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
    - (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
    - (b) should be kept in custody for his own protection.
9. The averments of the Respondent which remain uncontroverted, point a picture of a serial offender. In the case in question, he is facing 11 counts of offences relating to forgery under Chapter XXXV of the Penal Code. He is also facing the charge of rape in Kilifi Criminal Case No. E145/2024, and of obtaining money by false pretense in Kilifi Criminal Case No. E158/2023. While out on bond in these cases, the Applicant has continued to engage in criminal activity. He assaulted and injured Kilifi DCI officers for arresting his accomplice Precious Mbindyo and the matter was booked vide OB No. 14/03/02/2025. The Applicant is currently under investigation for the offence of stealing following a report vide OB No. 77/01/02/2025 at Kilifi Police Station. In this case, the complainant Patrick Kiti



lives with disability and has expressed fears for his security. The Applicant is also being investigated on other forgery related offences and masquerading as an advocate vide OB No. 88/31/01/2025 and has refused to cooperate with investigating officers.

10. In the circumstances of the case, the reasons advanced by the Respondent in opposition to the Applicant's bail/bond application are both forceful and convincing. There is the likelihood that his release will hinder investigations. As a serial offender, the Applicant has continued to committed offences even while out on bond. His criminal behaviour has continued to affect members of society and releasing him on bond will militate against public interest.
11. The foregoing are all, in my view, compelling reasons as contemplated under Article 49(1)(h) of the Constitution to warrant denying the Applicant bail/bond. Accordingly, the Application is not merited and the same is dismissed.

**DATED SIGNED AND DELIVERED IN MALINDI THIS 28<sup>TH</sup> DAY OF MARCH 2025**

**M. THANDE**

**JUDGE**

