



REPUBLIC OF KENYA



KENYA LAW
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**Mohammed v Republic (Criminal Miscellaneous Application
E156 of 2022) [2025] KEHC 5324 (KLR) (Crim) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5324 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL MISCELLANEOUS APPLICATION E156 OF 2022**

AM MUTETI, J

APRIL 29, 2025

BETWEEN

KOWTHAR ABDIRIZAK MOHAMMED APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant by way of a chamber summons expressed to be brought under Section 124 of the *Criminal Procedure Code*, Article 39(3) of the *Constitution* of Kenya, the bail and Bond Policy at Para 2.2 and all other enabling provisions of the law for the following Orders: -
 - a. That this Honorable court be pleased to vary and or set aside and or vacate the Orders of Hon. Lady Justice Nzioka issued on 7th March 2023 requiring the applicant to deposit his passport in Court until the matter is heard and determined.
 - b. That this court be pleased to grant any other order in the circumstances to protect the accused's right under Article 39(3) of the *Constitution*.
2. That the applicant contends that he has been charged with a misdemeanor where she is accused of obtaining goods by false pretence contrary to Section 313 of the *Penal Code*.
3. That the High Court delivered a ruling by Hon Lady Justice Grace L Nzioka wherein it varied upwards the bail and bond terms of the trial court.
4. That the High Court ordered for the release of the accused on a bond of Kshs 2,500,000/= with sureties of similar amount, in the alternative a cash bail of Kshs 1,500,000/-. The court further ordered that the accused to deposit her passport until the case is heard and determined wherein the Accused has fully complied.



5. That whereas the Accused fully complied, there has been a fundamental change of circumstances necessitating her use of the passport.
6. That on 8th July 2023 the Accused made an application in the trial court for the release of her passport wherein Hon M. W Njagi delivered a ruling on 16th January 2024 stating that the court had no jurisdiction to handle the matter as an attempt to issue such orders will amount to reviewing the high court decision necessitating this application.
7. That the accused has since become sick and need to travel to India for urgent medical attention.
8. That before her arrest, the Accused used to travel a lot for her electronics business, her businesses have continuously faced challenges due to her inability to travel and source for goods to trade as she always did.
9. That the accused is a breadwinner and depended on by her immediate family who continue to experience hardship as the support has continuously faded away due to inability to run her companies as it necessitates travel,
10. That during the demonstration that happened in the country , her business was looted and broken into and she has been unable to restock as she cannot travel.
11. That the accused is not a flight risk as corroborated by Paragraph 34 Of The Judgment Dated 7th March 2023 wherein the court stated "...there is no indication that the applicant is a flight risk and that she will not turn up for trial, unless she is induced by linient bond terms.
12. That despite the court revising the terms upwards to further secure attendance of the Accused to court, she was directed to deposit her passport which has greatly limited exercise of her rights under Article 39(3) of the Constitution on freedom of movement.
13. That if the Applicant is not allowed access to her passport, her health stands to deteriorate and being a single mother of four, her children stand to be prejudiced in terms of provision.
14. . That it is my prayer that this Honourable Court allows the application.
15. That the complainant who appeared as an interested party in the matter opposed the application indicating that the application if granted would culminate into delay in the hearing and conclusion of the matter in the lower court thus this court should not be minded to accede to it.
16. Following the representations by the interested party this court asked counsel appearing for her to confirm whether indeed the documents submitted by the applicant indicating that she required to travel for medical reasons were genuine.
17. The interested party's counsel Mr. Paul Maingi Musyimi filed an affidavit in which he deponed;-
 - i. That on the 30th of October 2024, this honourable court directed that we authenticate the medical documents that the Applicant had attached in the Application dated 27th August 2024.
 - a. That I was able to write two emails one to Parker Clinic in Parklands Nairobi and Dr. Parker categorically owned to the documents but pointed out that the last visit by the Applicant herein was on the 6th December 2023 and that he did not refer her to India as the procedure could be handled locally.



- b. That on the other hand, an email to Apollo Hospitals, Hyderabad, was responded to wherein Dr. Sameer Agrawal neither admitted the documents nor denied the same stating that the patient must give her consent for such a request to be honored.
 - c. That I would wish to present the responses thereto in this affidavit and the extract from the said emails are herein annexed as "Annexure -01"
 - d. That it is our considered view that the responses to the emails as attached show that the last time the Applicant was in the hospital was on the 6th December 2024.
 - e. That the emails also point to the fact that the Applicant has not presented any documents showing that she is unwell in this very year 2024. There is no referral letter to India that has been provided and hence no change of circumstances to warrant release of the passport to her.
 - f. That it is the complainant's position that the application to attend treatment in India is not supported by any document as the Applicant is using some medical documents that were in existence since 2022 when this matter was before this very court.
 - g. That what is deponed to herein above is true to the best of my knowledge,
 - h. information and belief."
18. The state through Mr. Chebii prosecution counsel took the position that the arguments by the applicant were not convincing and that there was no guarantee that the applicant would return for trial thus this court should not be inclined to grant the application.
 19. The law on release of accused persons on Bail is that the court can review bail terms at any stage if there are change of circumstances necessitating such review.
 20. However, the applicant must be able to demonstrate that indeed circumstances have changed to merit such a review. See *Rep. v Diana Salim Suleiman* (2014) eKLR
 21. It is not enough for the applicant to present a case of review of bail urging the court to consider that there is change of circumstances and fail to provide supporting evidence that indeed that is the situation'.
 22. The applicant would have done herself justice had she presented an upto date document showing that she requires to travel for treatment to India for treatment.
 23. The court is not convinced that the intended travel is on medical grounds since the applicant in his own affidavit introduced issues of business as a ground for seeking release of the passport.
 24. The right to liberty under Article 39(3) of the *Constitution* just like all other rights is not absolute and may be limited. In this case the court limited the movement of the applicant on account of the pending case which is constitutionally permissible.
 25. The application is therefore without merit and is hereby dismissed. The applicant remains at liberty to reapply should he obtain current documents to demonstrate the need to travel out of the country for treatment.
- It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF APRIL 2025.



A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Mangi for the for Applicant

Ms Ogega for the Respondent

