



**Mutinda v Republic (Criminal Revision E850 of 2023)
[2024] KEHC 563 (KLR) (Crim) (29 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 563 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E850 OF 2023
K KIMONDO, J
JANUARY 29, 2024**

BETWEEN

CYRUS MUTUA MUTINDA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant is aggrieved by the order of Hon. M. Thibaru, RM, dated 21st July 2022 and 22nd September 2022 in Makadara Criminal Case 3719 of 2022.
2. The learned trial magistrate released the accused on cash bail of Kshs 3,000,000 or a cognizance of a similar sum with one surety. On 31st May 2023 and 2nd November 2023, the trial court declined to review the bail terms.
3. The applicant now seeks revision before the High Court primarily on the ground that the terms are an unreasonable and a fetter on his constitutional right to be presumed innocent.
4. I called for the record of the lower court. I note that the applicant is charged with several counts. The first is for theft by servant of the sum of Kshs 13,177,400 and contrary to section 281 of the [Penal Code](#). The other three counts relate to forgery, making of a false document and uttering the document contrary to sections 350 and 357 (a) & (b) of the [Code](#).
5. He pleaded not guilty and the case is still pending. The revision is opposed by the Republic.
6. On 11th December 2023, learned counsel for the applicant and the Republic appeared before me. I confirmed that the original records of the lower court had now been availed. I directed that this being a revision, and by dint of section 365 of the [Criminal Procedure Code](#), no party had a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision.



7. My view is now as follows. Article 165 (6) of the Constitution confers the High Court with supervisory jurisdiction over all subordinate courts. Furthermore, and, by dint of sections 362 to 364 of the Criminal Procedure Code, the High Court is imbued with wide powers to review the orders of the learned trial.
8. The accused is deemed innocent as guaranteed by Article 50 (2) (a) of the Constitution. Under Article 49 (1) (h), he is also entitled to bail on reasonable terms. Furthermore, the overarching objective of bail is to ensure the accused attends trial. See Michael Juma Oyamo & another v Republic, Court of Appeal, Nairobi Criminal Appeal 113 of 2018 [2019] eKLR; Muraguri v Republic [1989] KLR 181; R v Fredrick ole Leliman & 4 others, Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
9. The applicant has already been granted bail. The only question is whether the terms are disproportionate or whether the decision of the learned trial magistrate is incorrect, illegal or improper.
10. The trial court had discretion to set the terms of bail. From the first count I cited above, the applicant faces the charge of theft by servant of the sum of Kshs 13,177,400. Although he is still deemed innocent, I am unable to say that the bond was too steep in the circumstances. As the trial is still pending, the less I say about the matter, the better.
11. It follows as a corollary that I am unable to impeach the correctness, legality or propriety of the order of the by the subordinate court. The upshot is that the revision is unmerited. It is hereby dismissed and this file closed.
12. The original lower court file and records shall now be returned to the lower court together with a certified copy of this ruling. The Deputy Registrar shall notify the applicant, his counsel and the Director of Public Prosecutions of these orders.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JANUARY 2024.

KANYI KIMONDO

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

Ruling read in chambers in the presence of: -

Mr. E. Ombuna, Court Assistant.

