



**Republic v Ballah (Criminal Case E047 of 2020)
[2024] KEHC 4560 (KLR) (Crim) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4560 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E047 OF 2020
LN MUTENDE, J
APRIL 30, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ZACHEUS WASONGA BALLAH ACCUSED

RULING

1. Zacheus Wasonga Ballah, the accused, following the accusation of having committed murder was granted bond/bail with conditions attached. He was required to: post bond of Ksh. 2 Million with a surety of a similar amount or deposit a cash bail of Ksh 300,000/-; not to interfere with prosecution witnesses; furnish the court with details of his permanent place of abode, a contact person, a letter from the chief and to attend court at all times.
2. Subsequently the accused sought review of bond/bail terms issued on 2nd November 2021 and by a ruling dated 26th January 2023 the court revised the cash bail to Ksh. 200,000/-
3. On the 17th January 2024, through an oral application the accused seeks further review of bail terms set, in particular the cash bail to be reviewed to Ksh 50,000/-
4. It is urged that the accused has been unable to comply with the bail terms. That his sister is willing and able to assist him by posting cash bail of Ksh 50,000/-
5. It is submitted that the accused has a medical issue and that he has finished paralegal training which will be useful. That circumstances have changed as his sister is able to help post cash bail if reviewed. Initially it was also argued that his relatives can post bond of Ksh 100,000/-



6. The State through the learned Prosecution Counsel. Ms. Dela did not oppose the application but submitted that the accused should not interfere with witnesses. Further that a letter from the chief and a contact person be availed and that the earlier terms granted before be maintained.
7. The letter dated 12/8/2023 from Nairobi remand allocation prison medical facility indicates that the accused has been complaining of chest pains and has difficulty in breathing. He has complained of dizziness and has restriction in movement. That the accused is currently handled at the sick bay. The letter dated 17/10/2023 from Justice defenders confirms that the accused has been a paralegal inmate since January 2021 and has worked on his rehabilitation.
8. Looking at the court ruling dated 16/11/2022 it was noted that the accused had been in custody since 15/12/2020. The court notably exercised its discretion and reviewed bond terms of Ksh 2 million with one surety of similar amount and alternative of cash bail of Ksh 300,000/= issued at plea taking stage to Ksh 1 million with 1 surety of similar amount or cash bail of Ksh 200,000/=. With additional conditions afore stated.
9. I have considered rival arguments. By principle the accused is entitled to reasonable bond terms which are affordable and not seen as arbitrary or oppressive. Similarly, he has the right to approach the court to review bond terms.
10. The *Bail and Bond Policy Guidelines* underpins this right as follows:
 - “ d)) Right to Reasonable Bail and Bond Terms:

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.” (See paragraph 3.1 (d) (page 9)
11. In the case of *Taiko Kitende Muinya v Republic* (2010) eKLR Ochieng J (as he then was) stated that an arrested person and a person facing trial is entitled to be released on reasonable conditions. What is reasonable will be determinable by references to the facts and circumstances prevailing in each case.
12. It is apparent that the accused is unable to comply with the already reviewed terms and has been in custody since 15/12/2020 requiring further consideration to serve justice.
13. Apart from consideration that bond terms must be reasonable and further requirement that the accused personal circumstances must be taken into account, the court’s discretion is also directed by other preconditions as follows: -

That bond terms should not be too lenient to encourage forfeiting or absconding, bond should also tally with the nature of the offence and circumstances of the victim.



Secondly, it is also trite that serious offences with severe sentences come with temptation to abscond and even frustrate the trial when the accused considers what is ahead of him. The interest and right of the victim must also be considered as per the provisions of the *Victim Protection Act*. In this case, the deceased was a 7-year-old child who suffered extensive head injury and the body found decomposed. The allegations pending trial are that the accused and the deceased mother had cohabited at the time the deceased demise and the accused faces trial on the child's murder.

14. The prosecution had earlier opposed the application for bond on ground that the witnesses are known to the accused. Witnesses have also testified in the case. It is my view that
15. the prevailing bond terms requiring the accused to post Ksh 1 million bond calls for revision which I hereby do and substitute the same with Ksh. 500,000/- but, the cash bail of Ksh 200,000/- which is reasonable considering circumstances of the case in its entirety will remain as set.
16. For reasons given the application for review succeeds to that extent.
17. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY* THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 30TH DAY OF APRIL, 2024.

L. N. MUTENDE

JUDGE

In The Presence Of:

Accused

Mr. Nzomo for the Accused

Ms. Ogwenyo for ODPP

Court Assistants – Habiba/ Fatuma/Hadija

