



**Republic v Mogaka (Criminal Case E076 of 2021)  
[2024] KEHC 4032 (KLR) (Crim) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4032 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E076 OF 2021  
LN MUTENDE, J  
APRIL 25, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**VINCENT MOGAKA ..... APPLICANT**

**RULING**

1. Vincent Mogaka, the accused was denied bail on the ground that he attempted to commit suicide following the alleged murder. The court found that it was in the interest of his safety, to be in prison.
2. Secondly, the court found that the averment that he wanted to be released so as to secure specialized medical care being without merit as he could still access specialized treatment through referral to hospital.
3. It is now urged that the accused is not able to access special meals and his intestines were constricted; hence the plea for review of bail.
4. The application is opposed by the State that submits that specialized treatment was to be secured through Kenyatta National Hospital or Mbagathi Hospital. That the accused was denied bail for his own protection as he was prone to committing suicide, facts that the defence has not touched on.
5. The *Judiciary Bail and Bond Policy Guidelines*, paragraph 4.2.6 (h) sets out considerations of granting or declining bond. It also recognizes the fact of change of circumstances that may make a court reconsider Bail/Bond terms.
6. In exercising the discretion bestowed upon the court, the decision reached must be a judicious one.



7. In the case of *Republic v Diana Suleiman Said and another* 2014 eKLR which is persuasive the court stated that:

“.....The changed circumstances test is one of common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused...”

8. The major reason that prompted the court to deny the accused bail is his suicidal tendencies. This issue has not been addressed. Therefore, there have not been any change of circumstances that could make the court review the earlier order.

9. In the result, the application lacks merit. Accordingly, it is dismissed.

10. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT  
NAIROBI, THIS 25<sup>TH</sup> DAY OF APRIL, 2024.**

**L. N. MUTENDE**

**JUDGE**

