



REPUBLIC OF KENYA



**Baumgartner v Republic (Miscellaneous Application E032 of 2023)
[2023] KEHC 17275 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 17275 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E032 OF 2023**

**HM NYAGA, J
MARCH 23, 2023**

BETWEEN

MARTIN HERMANN BAUMGARTNER APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Martin Hermann Baumgartner is charged with several counts in the Chief Magistrate's Court at Nakuru, vide criminal case No. MCSO E008 of 2023. The counts are; two counts of Defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* No.3 of 2006; two counts of Sexual Assault Contrary to Section 5(1)(a)(i) of the *Sexual Offences Act* No.3 of 2006; four counts of Compelled or induced indecent Acts contrary to Section 6(a) of the *Sexual Offences Act* No.3 of 2006; two counts of Trafficking in Person contrary to Section 3(1)(e) (3) as read with Section 3(5) of the Counter Trafficking in Persons Act No.8 of 2010; and a count of indecent Act with child Contrary to Section 11 of the *Sexual Offences Act* No.3 of 2006.
2. In the alternative he is charged with two counts of Indecent Act with a Child contrary to Section 11 of the *Sexual Offences Act* No.3 of 2006.
3. From the pleadings, it is apparent that the accused was arrested on 14th of February, 2023 and he took plea on the 20th of February, 2023.
4. Subsequently, the Prosecution made an oral application to have the accused denied bail on grounds that (a) he holds dual citizenship of Kenya and German and (b) that the victims were working for him and or others working for him and there was a likelihood of him interfering with the witnesses.
5. Mr. Kipkoech, advocate for the victims in the lower court case, echoed the prosecution's sentiments.



6. Mr.Karanja, advocate for the Accused/applicant submitted that the Accused is also a Kenyan and should be subjected to *the Constitution* and bail and bond policy of the Judiciary. He further submitted that the accused therein/applicant had already submitted his passports to the Investigating Officer for Safe Keeping.
7. Hon E. Soita, Senior Resident Magistrate, after considering the submissions by the respective parties, delivered his ruling on 22nd February 2023 on the following terms: -
 1. Pending the testimony of the Victims herein, Accused Person shall not be admitted to Bail.
 2. After testimony of all victims herein, accused person shall be admitted to bond in the following terms: -
 - a. Bond of Ksh. 1,000,000/= with two (2) Kenyan Sureties of a similar Amount.
 - b. The two passports for the accused Person; German and Kenyan which are held at DCI, by Evelyne Mboga to remain in custody of DCI pending hearing and determination of the suit herein.
 3. On basis of Order 1, the prosecution is advised that no unnecessary adjournment shall be allowed, and suit hearing shall be fixed for pre-trial within 7(seven) days hereof on a date agreed and issued by court after delivery of this Ruling.
8. The Applicant was dissatisfied with the above ruling and filed the instant application dated 8th of March 2023.
9. The application is brought pursuant to Articles 49 & 50(1) of *the Constitution* and Sections 364,365,366 and 367 of the Criminal Procedure Code and all enabling provisions of the Law and it seeks the following orders: -
 1. Spent
 2. That this Honourable Court be pleased to review bail/bond terms given by Hon. Soita S.R.M on 22nd February,2023 in Nakuru Chief Magistrate’s Court Criminal Case No. MCSO No. E008 of 2023 – Republic Vs Martin Hermann Baumgartner.
 3. That the Honourable Court be pleased to issue an order in the just dispensation of this Application.
10. The Application is premised on grounds that the aforesaid bail and bond terms imposed by the lower court. In a nutshell the applicant states as follows;
 - a. That if enforced, the orders will be prejudicial to the Applicant and tantamount to a breach of natural justice considering that there are no clear timelines on when the victims will testify;
 - b. That the right to liberty and presumption of innocence are rights afforded to every Kenyan Citizen and protected under Article 49 and 50 of *the Constitution* and as such;
 - c. That the Applicant being a citizen of this country should be afforded the same rights and deserves to have the bail and bond terms reviewed;
 - d. That the court has to balance the rights of the accused person and those of the victims and denying him bail will seemingly be adjudging him guilty even before trial starts;



- e. That consequently there will be a great miscarriage of justice on the accused person if the court does not exercise its supervisory role to intervene on the issue of the stipulated bond terms and offer him the protection afforded to him by *the constitution*;
 - f. That it is prudent that this honourable court considers the urgency of this matter considering the substantial loss/harm that stares in the face of the applicant should the directives be enforced as the applicant stares at an indefinite time in prison;
 - g. That as such it is only fit and just that this honourable court reviews the said ruling and takes into consideration that the applicant, having already surrendered his travel documents, is not a flight risk and has not given any reason to show that he is a hindrance to the investigation and trial.
11. The application is supported by Applicant's Counsel's Affidavit sworn on the even date which reiterates the above grounds.
 12. The Respondent vehemently opposed the application vide a Replying Affidavit sworn on 15th March 2023 by one Evalyne Mboya, the lead Investigating Officer in this matter, attached to Directorate of Criminal Investigations Anti-Human Trafficking and Child Protection Unit.
 13. She deponed that the applicant was arrested at Kwa Nyayo area near Kamindo Centre 1 within Nakuru North Sub County in Nakuru County for the offence of Defilement, Child Trafficking as set out hereinabove and being in possession of a firearm without firearm licence contrary to Section 4(2)(a) of the *Firearms Act* of 2012, among other charges.
 14. She further averred that the applicant is an adult aged 62 years and has dual citizenship, holding a Kenya National Identification Card Number 37461322, Kenyan Passport NO. AK0376479. That he is also a German National holding a German Passport NO. C47CKVKGK.
 15. It was her deposition that the Applicant was found in possession of a firearm make Alfa 2 Double Action Revolver S/NO.4201001880 without a licence.
 16. It is further averred that he is a flight risk by the fact of being of dual citizenship, and that being the Director of Twajenga Holding Limited Company has great influence in the community, where the victims come from.
 17. She also averred that the applicant not only provides financial assistance to the male child through his aforementioned Company but has great attachment to the victims to a level that they refer to him as Mzee. That since he pays for their upkeep, there is likelihood of the victims being compromised.
 18. She further contended that there are four minors involved in this case who are all candidates; In grade 6, class 8 and form 4 and are preparing for their exams and cannot be taken away under the victims' protection in the event the accused person is released from custody since he is the one paying for their school fees and will freely visit them.
 19. She further deposed that other victims are employees at Twajenga Holdings Company Limited where the Applicant resides, hence there is a likelihood of him compromising the victims.
 20. She also averred that the investigations revealed that the applicant is interfering with witnesses by communicating directly to them through a cell phone no. 0706039403, persuading them to talk on how to drop the charges against him.



21. To buttress this last point the investigating officer stated that there is a registered case of conspiracy to defeat justice vide Nakuru Criminal Court Case No. E 540 of 2023 filed against Brian Nessay Owino and Felix Kipchirchir who are the Applicant's personal assistants.
22. She further stated that the said cell phone number 0706039403 is registered under the names of Brian Nessay Owino of ID NO.33391535 who is the first accused in the case of conspiracy to defeat justice and that the same was registered while the Applicant was in Custody.
23. She also deponed that the Applicant, while in custody, has been able to intimidate victims through sending his agents to dismiss the victims from employment due to the case of sexual allegation that is pending before lower court.
24. It was also her deposition that she is cognizant that the Applicant is innocent until proven guilty but considering the magnitude of this case the community may turn hostile against him.
25. She averred that it is in the best interest of the minor victims that the case is conducted while the Applicant is in custody, to avoid further interference with the victims and witnesses.
26. The investigating officer further states that the applicant's application for review herein is misplaced as there is no error on record and that there is no new evidence that the applicant has discovered that was not available to him at the time orders seeking review were made.
27. She contends that under Article 49 (i) (h,) granting of bond or bail to the Accused is discretionary and the trial court did not err by granting the Applicant the Conditional Bond/bail.
28. The Application was canvassed through written submissions and the same were orally highlighted on 16th of March, 2023.

Applicant's Submissions.

29. The Applicant's Counsel submitted that under Article 49(1)(h), bail is a Constitutional right which should be granted to the Accused Person unless there are compelling reasons.
30. He argued that as per Article 50(2) of *the Constitution*, every accused person is entitled to presumption of innocence and that the Judiciary Bail and Bond Policy Guidelines of 2015 provide parameters which assists the court in exercising its discretion Judiciously.
31. The Counsel further submitted that the burden of proof of existence of compelling reasons not to release the Accused on bail lies with the Prosecution. For this proposition reliance was placed on the case of Christopher Kyalo Kitila V Republic [2021] eKLR where the court cited the case of Republic vs. William Mwangi Wa Mwangi [2014] eKLR, where Muriithi, J held inter alia that in the event that the state is opposed to the grant of bail to an accused, it has the onus of demonstrating that compelling reasons exist to justify denial of the Constitutional right to bail.
32. The Applicant's counsel further argued that the threshold for denying a person bail on grounds that he will interfere with witnesses was laid down in the case of Republic v Asbel Kiprof Malel [2014] eKLR where the court cited the case of JAFFER -VS- REPUBLIC [1973] 1 E.A. 39 in which the court while dealing with the question of tampering with witnesses, in turn cited the words of Wilson AG C.J (as he then was) in Bhagwanji Kakubhai -Vs- Republic, 1 T.L.R. 143 ;

'That the tests laid down (in English Cases) were that there should be a definite allegation of tampering or attempted tampering with witnesses, supported by proved or admitted facts



showing reasonable cause for the belief that such interference with the cause of Justice was likely to occur if the accused was released...'

33. The Counsel also referred this court to the case of Republic V Dwight Sagaray & 4 Others [2013] eKLR where the court stated that on the criteria of interference, the prosecution must place material before court which demonstrate actual or perceived interference. e.g. existence of threat/threats to witnesses, direct/indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses etc.
34. On the issue that the Applicant is a flight risk, the counsel referred this court to Paragraph H of the Bail and Bond Guidelines and the case of Republic v Kizito Indeché & Francis Ndungu [2020] eKLR where the court stated the kind of evidence needed to establish the “compelling reasons” must be cogent, very strong and specific evidence and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.
35. It was further submitted that the Applicant is a Kenyan Citizen with a fixed abode in Nakuru North Sub County and that his act of surrendering his Kenyan and German Passports to the Investigating Officer is a proof that he is not a flight risk.
36. He also submitted that there is no conclusive evidence or compelling reasons to imply the Applicant will abscond the trial.
37. As regards the victim statement and call logs annexed to the Respondent’s Replying Affidavit in support of the averment that Applicant has interfered with witnesses, the Applicant’s Counsel urged this court to disregard the same on grounds that the calls were not made by the Applicant but by one Brian Owino, who allegedly called the victims while the Applicant was in custody.

Respondent’s Submissions.

38. The respondent in their submissions reiterated the averments contained in their Replying Affidavit.
39. The respondent referring to the case of Republic v Asbel Kiprop Malel [supra] cited by the Applicant, argued that this case is distinguishable from the facts of the said case because in that case the prosecution did not tender any proof that the applicant would interfere with the witnesses. That in the instant case, the state has tendered tangible evidence to buttress their assertions on the attempts to interfere with the witnesses.
40. It was similarly submitted that the case quoted by the Applicant of REPUBLIC V DWIGHT SAGARAY & 4 OTHERS [supra] was distinguishable and inapplicable for reasons that the alleged Applicant’s interference with the witnesses therein was due to his diplomatic status which he had been relieved off at the time the Application was made, unlike in this case where the Applicant is still influential by virtue of sponsoring the victims’ education and his directorship position at Twajenga Company Limited where some victims are employed.
41. The respondent urged this court to adopt the court’s decision in the case of K K K v Republic [2017] eKLR where the court in denying bond to the Applicant stated;

“As the victim is a minor in need of care and protection, and there being a likelihood of interference, the accused shall remain in custody till the minor comes to testify upon which the accused bond terms shall be reinstated.”
42. As to whether the applicant is a flight risk, the respondent submitted that the applicant enjoys dual citizenship and so may abscond. It was further submitted the applicant was found in possession of the



firearm without a licence and this demonstrate that he will go to any length to evade justice including absconding trial.

43. It was further submitted that the Applicant is indeed a flight risk as he is facing serious charges yet he does not have a fixed place of abode and has no family ties in Kenya.
44. The respondent argued that it has proved, on a balance of probabilities that there exist compelling reasons to warrant the applicant's right to bail being curtailed.
45. The victims counsel filed the list of Authorities on 17th February,2023.

Analysis & Determination

46. Revisionary powers of the High Court donated in Article 165 of *the Constitution* clearly permit the Applicant to approach this Court for revision, as he did. Precisely, Article 165(6) and (7) of *the Constitution* empowers this Court to make any order or give any direction it considers appropriate to ensure fair administration of justice. The said provisions are couched in the following terms: -
 - (6) 6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) for the purpose of clause (6), the High Court may call for the record of any proceedings before any court or person, body of authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
47. The court also has powers under the Criminal Procedure Code. Section 362 thereof provides as follows: -

362: The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.
48. The purview of revision therefore is to check the correctness, legality and or propriety of the orders made by the lower court.
49. The applicant's major ground for revision is that if the bail and bond terms issued by the lower court are enforced it will be prejudicial to him and tantamount to a breach of natural justice considering that there are no clear timelines on when the victims will testify.
50. The Applicant also believes that there were no compelling reasons to warrant denial of the Bail which is a constitutional right.
51. The Respondent on their part argued that the court has discretion to grant or deny bail. That in the instant matter the trial court correctly granted conditional bail as there was concrete evidence of interference of the witnesses by the Applicant.
52. It is equally the Respondent's view that the Applicant has no fixed place of abode and being of dual citizenship there is a possibility of him absconding court.
53. It is therefore crucial to interrogate whether, firstly, the Applicant is a flight risk and secondly, whether Evidence of interference with witnesses was brought forth in court.
54. There is no dispute that the accused is constitutionally entitled to bail/bond unless compelling reasons are demonstrated. Article 49 (1) (h) of *the Constitution* of Kenya 2010 provides that an arrested person



has a right to be released on bond or bail on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

55. Section 123 of the CPC was amended to align itself with *the Constitution*. The section also permits bail for all criminal cases and makes bail available at all times at any time while in the accused is in custody or at any stage of the proceedings a court can grant bail.
56. Section 123A of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, stipulates that:
- (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 or 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 fulfilment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of his 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.
57. By virtue of Article 50(2) of *the Constitution*, every accused person is entitled to the presumption of innocence. Hence, in the Bail and Bond Policy Guidelines, it is recommended that:
- The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pre-trial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.
58. The Bail and Bond Policy Guidelines, in Paragraph 4.9 further provide that:
- “In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of *the Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”
59. In *Republic vs. Milton Kabulit & 6 Others* [2011] eKLR, the Supreme Court of Nigeria set out compelling reasons for declining bail as including:
- a. nature of the offence,
 - b. strength of the evidence, which supports the charge,
 - c. the gravity of the punishment in the event of conviction,



- d. the previous criminal record of the applicant,
- e. the probability that the accused may not present or surrender himself for trial,
- f. the likelihood of further charges being brought against the accused,
- g. the likelihood of the accused interfering with the witnesses or may suppress any evidence that may incriminate him,
- h. the probability of finding the applicant guilty as charged,
- i. the detention for the protection of the accused,
- x. the necessity to procure medical or social report pending final disposal of the case.

There is also ample local jurisprudence on the question of whether to grant an accused bond/bail or not. In *Republic vs. Danson Mugunya* (2010) eKLR the High Court gave some of the factors to be considered by the court in deciding whether to grant or deny bail to an accused. These include:-

- a. The nature of charge or offence and the punishment to be meted out if accused is convicted.
- b. The strength of the prosecution case.
- c. Character and antecedent of the accused.
- d. The need to protect the victim or victims of the crime.
- e. Likelihood of interfering with witnesses.
- f. The relationship between the accused and potential witnesses.
- g. Whether the accused is a flight risk or not.
- h. Protections of the accused person.

Similarly, in *Danford Kabage Mwangi vs. Republic High Court Criminal case No. 8 of 2016*, the court also looked at what entails compelling reasons including:-

- a. That the accused will interfere with the course of justice.
- b. That the accused will commit further offences while on bail.
- c. That the accused is at risk of harm

60. The Criminal Procedure Bench Book, at paragraph 105, outlines compelling reasons as; likelihood that the accused may fail to attend court; may commit or abet the commission of a serious offence; endanger the safety of victims; interfere with witnesses or evidence; endanger national security or public safety; and protection of the accused person.
61. Blacks' Law Dictionary Eighth edition defines the word "compel" to mean "to convince a court that there's only one possible resolution of a legal dispute..." Concise Oxford Dictionary 9th Edition where the ordinary English meaning of the term compelling is given as "rousing, strong, interest attention, conviction or admiration". The same word has also been defined to mean "Evoking interest, attention, or admiration in a powerfully irresistible way." (See <https://en.oxforddictionaries.com/definition/compelling>)
62. In presenting a case for the court to deny an accused person bond or bail, the prosecution is only required to prove, on a balance of probability that there are compelling reasons not to grant bail to the Applicant. This was so stated in *R v Muneer Harron Ismail & 4 Others* [2010] eKLR. There is



no requirement that the Prosecution proves the compelling reasons beyond reasonable doubt. Indeed, such a standard would be impossible to meet at this point in the trial. [See, Bail and Bond Policy Guidelines at p. 19.]

63. Having set out the law as restated by the superior courts, I will now look at the matters at hand.
64. There is no dispute that the Applicant is of both Kenyan and German citizenship. The respondent alluded that the Applicant being of dual citizenship and having no fixed place of abode, and with no family ties in Kenya, is a Flight Risk and likely to abscond court.
65. The issue of dual citizenship, in my view, is not one of the compelling reasons for denial of bail as envisaged under Article 49 (h) of *the Constitution*. The Applicant is also a Kenyan and thus constitutionally entitled to bail. He indisputably surrendered his two passports to the Investigating officer for safe Keeping. He also runs his business in Kenya. The respondent stated clearly that the Applicant is the Director of Twajenga Holding Company Limited. The contention therefore that he is a flight risk based on his dual citizenship is speculative and should be disregarded by the court. To that end, I associate myself with the holding of the court in the case of; in R v Joktan Malende and 3 Others Criminal Case No. 55 of 2009, where it stated as follows:

“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 standards set by *the Constitution*”
66. The Applicant’s submissions that the Applicant has a fixed abode in Nakuru North Sub County is incontrovertible. In fact, the Respondent at Paragraph 14 of its replying Affidavit confirmed that the Applicant resides at the premises where the Victims are employed. Therefore the contention that the Applicant has no fixed place of abode is preposterous.
67. Having looked at the matter, I am not satisfied that the state has provided sufficient grounds to convince the court the applicant is a flight risk.
68. On interference of witnesses, the respondent contended that investigations revealed that the Applicant has interfered with the witnesses by directly communicating with them through Cell phone number 0706039403, persuading them to drop the case. It has also been submitted that there is a registered case of conspiracy to defeat justice presented to court, being Criminal Case No. E 540/23, Nakuru, against Brian Nessay Owino and Felix Kipchirchir who are said to be the Applicant’s Personal Assistants. The Respondent attached a statement of one victim and a calls data in support thereof.
69. It is not in dispute that the Applicant was arrested on 14th February, 2023 and has been in custody to date. It is apparent from the annexed Call logs, that the calls were made by one Brian Nessay Owino between 2.16.2023 to 2.20.2023 to unnamed victims. A perusal of the statement made by one of the victims, Samwel Mwangi, shows that Brian Owino and Felix Kipchirchir attempted to persuade him to drop the case on grounds that the Applicant will sort him thereafter. The Respondent purported that the said Brian Owino and Felix Kipchirchir are the Applicant’s assistants.
70. I did note that the applicant did not disown the two named persons as his employees. All he says is that the alleged calls were made while he was in custody.
71. While it is clear that at no point did the Applicant directly communicate to either the victims, it is not necessary to prove that direct communication. The court ought to look at the broader picture, namely who stands to benefit if the two named persons were successful?



72. While the applicant asked the court to disregard the filed witness statement filed by the witness to the conspiracy case, it is not denied that the case is in existence. Even though the matters remain to be proven the same point to an alleged attempt to influence a witness. At this stage it would be unreasonable to expect the Prosecution to ‘prove’ the same. If a reasonable ground is raised to support these assertions, then that is sufficient for now.
73. The Respondent also deponed that the Applicant, while in custody, has been able to intimidate the victims through his agents by threatening to dismiss them from employment. From the facts before the court, it does appear like that the applicant holds an element of influence over the alleged victims or witnesses. It follows that there is a likelihood that they will feel intimidated if they are to see the accused going back to where they reside and work.
74. Though the trial court did not state so categorically, it is apparent that the learned magistrate was of the same opinion, thus deferred the effective date of the bond terms to a time after the witnesses had testified. He then set out a date for a pre-trial mention.
75. I see nothing to fault the trial magistrate for in making that order. He was within his right if the circumstances dictated so, to defer the bail/bond terms. As I am in agreement with the trial court on the likelihood of interference, I find no good reason to review those terms.
76. Having stated the above I note that the order by the learned magistrate was open ended, in that the applicant would not be able to tell when the witnesses would testify. I think that in the circumstances of the case, the trial magistrate ought to have given specific dates for the affected witnesses to appear in court. Even at the time this application was made, it was not clear that the court had given the hearing dates. That may explain the anxiety that the applicant has over the implementation of the court orders issued therein.
77. I am of the view that what needs to be done is have some certainty as to the time when the witnesses will testify. That is the duty of the trial court, not this court. However, it is the duty of the trial court to have the matter expedited, especially for the taking of the testimony of the witnesses in question.
78. On the issue of community hostility against the Applicant as alluded to by the Respondent in paragraph 22 of its replying Affidavit, it is my opinion that no satisfactory material has been placed before this court in support of this ground. I am guided by the case of *Nicholas Kipsigei Ngétich & 2 Others vs. Republic* [2011] eKLR where Ouko, J (as he then was) held that
- “...it is the duty of the State in terms of Article 29(c) and 238 of [the Constitution](#) to ensure the security and safety of the applicants, a duty which the State cannot run away or abdicate. It cannot be in the mouth of a State official charged with this duty to imply that Kenyans will only be safe in prisons....”
79. Having looked at the application, I find that this is a case where the court ought not to interfere with the holding of the trial magistrate. There is no impropriety in the orders that were issued. The court was satisfied that there were sufficient grounds to defer the bond terms. It did not deny the applicant bond, but only gave conditions on when they would become effective.
80. The State should also note that while they strenuously oppose bond/ bail at this stage, they have the onus of availing the affected witnesses without unreasonable delay. Any act to the contrary will only prejudice the applicant, who has a right to bond or bail.
81. I am therefore inclined to disallow the application. However, in the interest of justice the trial court ought to expedite the hearing of the evidence of the affected witnesses without unreasonable delay. In



the event this has not been done in the next 14 days from the date hereof, the applicant's bond terms are to take effect, subject to the following terms;

- I. The Applicant may be released on a bond of Ksh. 1,000,000/= with a Kenyan surety of similar amount.
- II. The Applicant's Kenyan and German passports to remain in Custody of the DCI pending the hearing and the determination of the instant case.
- III. The Applicant shall not contact or intimidate and or threaten, whether directly or by proxy any of the prosecution witnesses during the pendency of this case.
- IV. The Applicant shall not leave the jurisdiction of the court without an order of the court.
- V. The Applicant shall stay away from Twajenga Holding Company Limited until he is allowed to do so by the trial court.
- VI. The Applicant shall not visit any of the Victims who are in Schools or contact their relatives.
- VII. In the event the applicant violates any of the above conditions, the bond terms shall be cancelled forthwith.
- VIII. Each party will be at liberty to apply for any further orders.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 23RD DAY OF MARCH, 2023.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

Ms Murunga for state

Ms Kinuthia for Mr. Karanja for Applicant

