



**Michino & another v Republic (Miscellaneous Criminal Application
E001 of 2025) [2025] KEHC 6402 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6402 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CRIMINAL APPLICATION E001 OF 2025
AN ONGERI, J
MAY 16, 2025**

BETWEEN

SHADRACK NJENGA MICHINO 1ST APPLICANT

FRANK KINYANJUI WANJOHI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicants filed this revision application seeking review of the trial court's ruling on bail pending trial.
2. I have considered the submissions by the Applicants and especially the fact that they are bread winners with children and siblings to look after.
3. While the law provides that each Accused person is entitled to reasonable bail pending trial, the law also provides that the only hindrance to such release is where there is a compelling reason why an Accused should not be released.
4. I have considered the pre bail reports filed in respect of the two Applicants and I find that the reports are not favourable.
5. I have also taken into account the affidavit sworn by the investigating officer opposing bail/bond and I find that it is in the interest of the Applicant's own safety that they should continue to be in custody.
6. The Applicants are targeted by boda boda riders within Taita Taveta County and their lives are in danger at the moment.
7. They are also considered a flight risk since they have no fixed abode and they are likely to abscond.



8. In determining this bail application, the court is guided by the constitutional and statutory provisions governing bail in Kenya, as well as relevant judicial precedents. Article 49(1)(h) of the Constitution of Kenya guarantees an accused person the right to be released on bond or bail, pending trial, on reasonable conditions, unless there are compelling reasons not to be released.
9. This constitutional right is further elaborated in the Bail and Bond Policy Guidelines (2015) and the Criminal Procedure Code (Cap 75), which emphasize that bail should not be denied as a form of punishment but only where compelling circumstances exist.
10. The court has carefully evaluated the circumstances of this case, including the Applicants' personal situations as breadwinners with dependents, as well as the objections raised by the prosecution.
11. While the court acknowledges the importance of preserving the Applicants' liberty and their familial responsibilities, it must also weigh this against the risks outlined in the pre-bail reports and the affidavit of the investigating officer.
12. The pre-bail reports, which are unfavorable, raise legitimate concerns about the Applicants' safety, given the hostility from boda boda riders in Taita Taveta County.
13. This aligns with the principle established in Republic v Danson Mgunya & another [2010] eKLR, where the court emphasized that the safety of an accused person can constitute a compelling reason to deny bail, particularly where there is credible evidence of a threat to their life.
14. Additionally, the court finds merit in the prosecution's argument that the Applicants pose a flight risk, given their lack of a fixed abode. This concern is grounded in judicial precedents such as Republic v Joktan Mayende & 3 others [2012] eKLR, where the court upheld the denial of bail due to the accused persons' transient lifestyle, which increased the likelihood of absconding.
15. The court in that case reaffirmed that the right to bail is not absolute and must be balanced against the need to ensure an accused person's attendance at trial.
16. In light of the foregoing, the court finds that the prosecution has demonstrated compelling reasons to justify the denial of bail at this stage.
17. The safety of the Applicants, coupled with the risk of flight, outweighs their personal circumstances.
18. Consequently, the application for bail pending trial is hereby denied. The Applicants shall remain in custody until the determination of their case or until a material change in circumstances warrants reconsideration. It is so ordered.
19. In the circumstances, their application for bond/bail was properly declined by the trial court.
20. I dismiss the revision application and direct that the Applicants continue to be held in custody and their hearing before the trial court to be expedited.

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF MAY, 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Prosecutor: Mr. Ngigi

Court Assistants: Maina/Millicent

