



REPUBLIC OF KENYA



**Kamunya v Republic (Criminal Revision E028 of 2024)  
[2025] KEHC 43 (KLR) (15 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 43 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CRIMINAL REVISION E028 OF 2024  
AK NDUNG’U, J  
JANUARY 15, 2025**

**BETWEEN**

**ENOCK NDIRANGU KAMUNYA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein, Enock Ndirangu Kamunyais facing a charge of defilement contrary to section 8(1) as read with section 8(4) and committing an indident act with a child contrary to section11(1) of [Sexual Offences Act](#) before the lower court. He pleaded not guilty to the charge and he was granted bond of Kshs 100,000/- with one surety. Stephen Kamunya Kariri stood surety for him and he was released.
2. Vide a ruling dated 04/10/2024, the trial magistrate cancelled his bond terms and the court ordered that he be remanded at Rumuruti G.K prison for the remainder of the trial. Aggrieved by the said ruling, his advocate filed a notice of motion application dated 17/10/2024 seeking for the following orders;
  - i. Spent
  - ii. That this Honourable court be pleased to review and set aside the ruling and orders of Hon. E.K Kithinji made on 04/10/2023 (sic) in Rumuruti Magistrate’s Court criminal Case No E021 of 2024 cancelling the Applicant’s bond terms and any other/or subsequent orders made thereto.
  - iii. That this Honourable court be pleased to admit the Applicant to reasonable bail and/or bond terms pending trial.
  - iv. That this Honourable court be pleased to make a declaration that Stephen Kariiri is competent to stand in as surety for the Applicant and that he should be allowed to do so if he so wish.



3. The application is grounded on the grounds thereof and is supported by an affidavit of the Applicant herein. He averred that on 29/08/2024, he was arrested on account that the surety had made a report that he was planning to escape the jurisdiction of the court and the surety had withdrawn his bond. That the surety had reported that he had heard rumours that he intended to escape but the said informants did not record statements or affidavits. Further, no material was placed before the trial court to prove that he was in the process or had formed any intention to abscond court and therefore, the court's determination was purely based on hearsay evidence.
4. He deponed that the court failed to take into consideration the subsequent evidence of the surety that he had verified the rumours to be untrue and was willing to stand surety for him. The court also failed to take into consideration why the surety was in haste to report to the police prior to verifying the rumours when he stated that he was acting in fear that he would be imprisoned should he abscond court. The court order declaring the surety as incompetent was also arbitrary since no such order had been sought and no justification existed to disqualify him and, in any event, the court ought to have given him a chance to get another surety. That the cancellation of bond terms amounts to gross violation of his fundamental rights as enshrined under Article 49 of the Constitution. That there was no risk of him intimidating witnesses as no evidence was supplied to the court and the minor has since testified. He averred that he is a young man with a young family who fully relies on him and he stands to suffer prejudice in that he is not in a position to adequately prepare for his defence. That he undertakes to submit and avail himself to court during trial.
5. In opposing the application, the prosecution counsel filed grounds of opposition dated 08/11/2024. She averred that the application does not meet the requisite threshold for the grant of the orders sought on account that it has not been demonstrated that the cancellation of the Applicant's bond terms was incorrect, illegal or improper, it has not been demonstrated that the proceedings leading to cancellation of the bond terms were irregular and therefore, the application lacks merit and is an abuse of the court process.
6. The application was canvassed by way of written submissions. The Applicant's counsel submitted that the State counsel relied on the affidavit by the investigating officer which shows that the prosecution's application was purely based on unconfirmed rumours, hearsay and assumptions. The information supplied by the surety was already confirmed by the surety himself to be mere rumours. That the surety confirmed to the court that the persons who informed him that the Applicant intended to leave the jurisdiction of the court were motivated by ulterior motives and his rush to report was motivated by fear. Further, the said informants were not named and there was nothing placed to court to show that the Applicant intended to run away.
7. On allegation that the he had attempted to interfere with the witnesses by attempting to persuade the victim to run away with him, it is submitted that the exact date when this happened was not stated, the victim and the Applicant do not live together, the date when he visited the minor's home as the IO stated was not mentioned, no statement or affidavit of the complainant or her family member was recorded and the crucial witnesses being PW1, 2 and 3 during their evidence in court did not confirm this incident to have occurred. Further, this was not one of the reasons the State made their application for denial of bail. She submitted that the IO relied on the allegation contained in the victim's statement on why his bond ought to be cancelled however, during plea taking, that ground was not raised by the IO. Therefore, this ground was an afterthought made up in order to convince the court to cancel the Applicant's bail.
8. Counsel submitted that it is clear that there were no investigations conducted on the matter which is proof that the cancellation of bail was irrational and baseless. That the ruling was in gross violation



of his right to be presumed innocent and he was not given an opportunity to be heard on the said allegations which was a violation to his right to fair hearing. There are no compelling reason existing to deny the Applicant bail and there is nothing curtailing the court to reinstate the bonds terms considering that the victim and other crucial witnesses have already testified.

9. In rejoinder, the Respondent's counsel submitted that the order by the trial court cancelling the bond terms was due to compelling reasons and hence not illegal. That the alleged violation of his right under Article 49 of the Constitution is not a matter that a court can entertain in a revision application and he ought to file a Constitutional Petition. That the Applicant is inviting court to exercise its appellate jurisdiction in a revision application since he had a right to appeal. That from his affidavit and submissions, he is attempting to argue an appeal against the order of cancellation of bond terms under the guise of revision. She submitted that although Article 49(1)(h) of the Constitution grants the applicant a right to bond, the said right is not absolute and can be denied if there are compelling reasons. The trial magistrate made a finding that balanced the rights of the Applicant and those of the complainant while considering the material that was placed before it by the investigating officer.
10. I have considered the Applicant's application, the response by the Respondent and the rival arguments.
11. This file has been placed before this court for revision in exercise of powers conferred on this Court by Article 165 (6) and (7) of the Constitution and section 362 of the Criminal Procedure Code which provides thus: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purposes 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.”

12. Under section 362 stated above, the court in an application for revision, is called upon to call for the record and inquire into the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any subordinate court. In so doing, the court ought to scrutinize the record and upon satisfying itself that the matter properly falls for an inquiry under revision, reverse the orders made.
13. The order sought to be revised is the order cancelling the Applicant's bond. It is the Applicant's contention that the trial court cancelled his bond based on hearsay and unsubstantiated rumours. The trial court failed to interrogate the information laid before it and further ignored the surety confirmation that the rumours were false and he was still willing to stand surety for the Applicant. The Respondent in opposing the application contended that there were compelling reasons that were advanced which were duly considered by the trial court in cancellation of his bond terms.
14. Bail pending trial is now a constitutional entitlement in all criminal offences. It will be denied only for compelling reasons; and any conditions that the court might impose, again by constitutional edict, must be reasonable. See Article 49(1) (h) of the Constitution of Kenya, 2010 which states that every accused person has a right-

“(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”



15. “Compelling reason” is not defined in the *Constitution* or in any law that this court is aware of. The term is also not defined in *Black’s Law Dictionary*, Tenth Edition. However, the term “Compelling need” is defined there as –

“ A need so great that irreparable harm or injustice would result if not met.”

A note following that definition states –

“Generally, courts decide whether a compelling need is present based on the unique facts of each case.”

16. The Applicant’s counsel referred the court to the case of *Republic v Joktan Mayende & 3 others* [2012] KEHC 5551 (KLR) where the court defined the term compelling reasons thus:

“...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 standard set by the *Constitution*.”

17. Compelling reason therefore, in this court’s view, is a reason that must militate against granting the accused bail. He who seeks to deny an Accused person his constitutional right to bail pending trial must therefore place evidence before the court as would establish, on balance, the compelling reason urged. It is not enough to merely allege without evidence.
18. I hasten to add, lest this court loses its compass in this application that, what is before court is not an application for bail. Such an application had been made and granted. The matter before the court is whether on the material placed before the court, the court made the right decision in cancelling the Applicant’s bond.
19. The trial court while cancelling the accused bond relied on the report that was made by the surety and his statement before court on oath and the affidavit that was filed by the investigating officer. The court noted that the surety reported to police station that he had received information that the accused was preparing to leave the jurisdiction of the court. Further, the court noted the relationship between the complainant and the Applicant and the conduct of the accused when he was on bond. It further noted that the surety was advanced in age and could not therefore secure the Applicant attendance in future.
20. I have perused the said affidavit by the investigating officer whereby he confirmed a report being made by the surety. The investigating officer also raised concern of interference with witnesses and threats to some of the witnesses.
21. The Applicant in his affidavit and submissions stated that the surety also informed the court that he was willing to stand surety for the Applicant since he confirmed the rumours to be untrue after carrying out an inquiry. This was not disputed by the prosecution. Further it is noteworthy that none of the said informants recorded a statement with the police to confirm that indeed the Applicant was in the process of leaving the jurisdiction of the court. Further, no investigations were conducted by the police to confirm if the rumours were true or not. The Applicant also stated that crucial witnesses have already testified including the complainant and therefore the issue of interference with witnesses does not arise.
22. Flowing from the above averments, it is manifestly clear that the application by way of a review as drawn and presented attempts to review findings of fact by the trial court on the merit. Whether the



court cancelled bond on the basis of hearsay evidence or rumours are matters of fact that were placed before the court to be proved or disproved.

23. The obtaining scenario ousts this court's jurisdiction on review. The invocation of the revisionary powers of the court under sections 362, 357,374 and 389B of the *Criminal Procedure Code* where the merits of a decision is in issue is an erroneous one. That jurisdiction is for the purposes of the High Court 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."
24. Any matter touching on the merits of the lower court's decision or order is subject to appeal.
25. Jurisdiction being the power of the court to adjudicate over a dispute is key in all proceedings. The court cannot arrogate jurisdiction on itself however noble the intentions might appear to be. The Supreme Court put it succinctly in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, where it held, that:

"A Court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second Respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings."
26. This court was invited to exercise its review jurisdiction over the decision of the trial court to cancel the Applicant's bond. As analysed above, this jurisdiction does not extend to determining a decision on the merit made by a lower court. I have already found that the issues raised herein are subject of appeal and not review.
27. The result is that the application before court has no merit and is dismissed.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF JANUARY 2025**

**A.K. NDUNG'U**

**JUDGE**

