



**Njoroge & another v Republic & another (Criminal Revision  
E009 of 2024) [2025] KEHC 3376 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3376 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL REVISION E009 OF 2024  
RC RUTTO, J  
MARCH 19, 2025**

**BETWEEN**

**JAMES KAMAU NJOROGE ..... 1<sup>ST</sup> APPLICANT**

**JAMES KAHIGA NDAI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... 1<sup>ST</sup> RESPONDENT**

**CATHERINE WANJA KIMANI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicants have moved the Court under sections 362 to 366 of the *Criminal Procedure Code* seeking that the Court examines the correctness, legality and propriety of the orders made on 7<sup>th</sup> December 2023 by the trial court in Chief Magistrate Court, at Machakos Criminal Case No E233 of 2022.
2. The Applicants, state that they were charged jointly with one Catherine Wanja Karani for obtaining money under false pretense contrary to section 313 of the *Penal Code*. That the said Catherine Wanja Karani entered into an out of court settlement agreement with the complainants in the criminal case but the applicants were not privy to the agreement. That based on the agreement, the prosecution applied to withdraw the criminal case under section 87 of the *Criminal Procedure Code*. That the trial court allowed the application and proceeded to issue an irregular and incorrect order by directing that all the accused persons' cash bail be paid to the complainant rather than the Depositors.
3. They urge that the disbursement of cash bail to the complainant contravened the legal principles that bail ought to be refunded to its depositors. That the case was withdrawn on the basis of admission by Catherine Wanja Karani. That she solely admitted to pay off all sums purportedly falsely acquired from the complainants; that this does not make the applicants liable to assist her in paying off the sum; that the purpose of bail is to ensure an accused person attends court as and when required and not to



- offset any monetary claim against the accused person and that the correct avenue to recover the claim was through a civil case and not making a demand for the cash bail.
4. The applicants rely on the definition of Bail as provided for under the [Bond and Bail Policy Guidelines, 2015](#) as well as the case of [Alfred Wangai Mundia & Another v Republic](#) [2018]eKLR.
  5. This application was opposed by the State through the Office of the Director of Public Prosecution. They submitted that the applicants were acquitted on the basis of an agreement of settlement between the parties. That the accused persons requested for leave to settle the matter out of court, and subsequently entered into a written agreement that settled the matter. That the orders of the court that cash bail be paid to the complainant were read in the presence of the applicants herein, they were aware of what transpired and they never objected to the same but later moved the court seeking revision.
  6. They urged that in view of the acquittal under section 204 of the [Criminal Procedure Code](#), the applicants ought to have exercised their right under appeal and not revision. They urged the court to dismiss the application on this basis.
  7. Under, section 362 of the [CPC](#) this Court is vested with powers to call 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.
  8. Further in the case of [Prosecutor v Stephen Lesinko](#) [2018] eKLR the Court outlined the principles to guide the Court when examining the issues pertaining to section 362 of the [Criminal Procedure Code](#) as follows: -
    - a. The decision is grossly erroneous;
    - b. Where there is no compliance with the provisions of the law;
    - c. Where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;
    - d. Where the material evidence on the parties is not considered; and
    - e. Where the judicial discretion is exercised arbitrarily or perversely if the lower Court ignores facts and tries the accused of lesser offence.
  9. I have perused the record before this Court and do note that a settlement agreement dated 24<sup>th</sup> April was filed in court. The agreement is between Daniel Mutuku Mbilalu and John Muithya Muasya (complainants) on one part and Catherine Wanja Karani (accused) on the other part. Clause (a) of the agreement acknowledges that the accused was charged in Chief Magistrate Court at Machakos Criminal Case No E233 of 2022 alongside two other persons with the offence of obtaining money by false pretense contrary to section 316 of the [Penal Code](#).
  10. The Court further notes that the prosecution did not make any application for the withdrawal of the case under section 87 of the [CPC](#) as alleged by the applicants. In fact, in multiple occasions, the Applicants' counsel informed the court that the parties were engaged in negotiations and that the defence was eager to settle the matter outside of court. Counsel confirmed that these negotiations were ongoing and even requested additional time to conduct fruitful negotiations. Notably during one of the sessions the Applicants' counsel informed the court that the parties have been negotiating towards settlement, that the complainants were in court and were willing to have the case withdrawn.



11. Ultimately, upon entering into the agreement that was filed in court, the matter was marked as an acquitted under section 204 of the *CPC*. It is also evident from the record that the complainants were examined in court as to whether they understood the ramification of seeking to withdraw the case under section 204. They both confirmed that they were under no duress and they knew that they will not bring similar complaint against the accused. With that understanding, the accused persons were acquitted under section 204. Having ruled that all accused persons were acquitted under section 204, the trial court then proceeded to order that the cash bail deposited in court be paid to the complainants. This is the borne of contention in this case.
12. It is trite law that where a complainant justifies to the court of his/her need to withdraw the complainant and the court agrees, then the accused is acquitted. See that case of *Mika Njagi Njiru v Republic* [2018] eKLR; *Kelly Kases Bunjika v Director of Public Prosecutions (DPP) & another* [2018] eKLR; and *Republic v Hasmukh Meghji Shah* [1984] eKLR, where it was held:

“The other section under which the respondent (or any other accused person) could be acquitted is section 204 of the *Criminal Procedure Code* which provides:

“204 If a complainant, at any time before a final order is passed in any case under this part, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same and shall thereupon acquit the accused”
13. Consequently, in terminating the matter under section 204 of the *CPC*, the trial court acquitted the accused herein. The question that follows is whether there is any other liability that follows an accused person, upon being acquitted? An acquittal means that the accused person has not been found culpable of the wrong with which he/she is accused of. Infact, rather than find him culpable and subject him to any liability, an acquittal grants the accused person a defence against any future charges on the same facts. By being acquitted he is now armed with the defence of autrefois acquit.
14. It therefore follows that an acquitted person cannot be ordered by the trial court that has acquitted him/her to cater for any liability (as he has been found not to be culpable). By an acquittal, the accused person cannot be condemned to make any restitution or pay a fine. Hence, upon making an order of acquittal, a trial court cannot make a subsequent order or direction that condemns an acquitted person to some liability.
15. The second aspect of the motion before this Court calls to question the import of bond and/or bail granted by the trial court. It is a constitutional right that an arrested person has a right to reasonable bond terms unless there are compelling reasons to deny bond. A bond is an agreement between the arrested or accused person and the court. That is why the same is issued at the discretion of the Court. In a trial, a bond or cash ail is an undertaking of the accused person to the Court that he will come to court when required. Hence where an accused person’s presence before the court ceases to be requirement upon conclusion of a matter either through a conviction, an acquittal, abatement upon death of the accused and/or withdrawal of the case, that bilateral agreement between the court and accused person ceases and the bond security or cash bail is returned back to the accused of the surety as the case maybe.
16. Hence, a cash bail cannot be outrightly converted. See the case of *Alfred Wangai Mundia & Another v Republic* [2018] eKLR where it was held that the legal position is fairly simple: cash bail is refunded to the person who deposited it. The onus is on the accused, if say upon conviction, he/she wishes to now convert the cash bail into a fine where one is ordered. But a trial court cannot suo motto order that cash bail be converted.



17. The upshot is that, this Court finds that the trial court having acquitted the accused persons in Chief Magistrate Court, at Machakos Criminal Case No E233 of 2022, the subsequent order that their cash bail be paid to the complainants was wrong, irregular and illegal. Having been acquitted, the applicants herein could not be subjected to any liability. Secondly, the trial court had no mandate to suo motto order that cash bail of the accused persons, applicants herein, who had been absolved from any criminal liability through an acquittal, be paid to the complainants. It is also worth noting that from the record, parties had infact agreed to some payment and the balance was to be paid in a future date.
18. I note that the State opposed the application submitting that the applicants were acquitted on the basis of a settlement and that the ruling was made in their presence and they never objected. This Court reiterates that upon acquittal, a person cannot be subjected to any liability. The agreement of settlement is/was a matter as between the two accused and complainants outside the criminal justice system. That is the reason why the complainants were cautioned that they will not bring a case back on the same facts. Secondly, the said agreement of settlement cannot be enforced within the criminal justice system. Hence, the state's submissions are without merit.
19. Secondly, the fact that the Ruling was delivered in their presence does not deny the applicants the right to file this revision application. In any event, once a court pronounce itself, a party cannot outrightly challenge the decision before that particular court, but has to move to the next level on appeal/review and/or revision.
20. Consequently, the application herein is allowed in the following terms:
  - a. The trial court's ruling dated 7<sup>th</sup> December 2023 acquitting the applicants is affirmed.
  - b. The order of trial court in its ruling dated 7<sup>th</sup> December 2023 ordering that the accused person's cash bail be paid to the complainants is set aside.
21. Orders accordingly

**DATED AND SIGNED AT MACHAKOS THIS 19<sup>TH</sup> DAY OF MARCH, 2025.**

**RHODA RUTTO**

**JUDGE**

Delivered on the virtual platform, Teams this 19<sup>th</sup> Day of March, 2025.

In the presence of;

.....Applicant

.....Respondent

.....Court Assistant

