



**Onyango & another v Republic (Miscellaneous Criminal Application
E025 of 2025) [2025] KEHC 2962 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2962 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E025 OF 2025**

**DK KEMEL, J
MARCH 14, 2025**

BETWEEN

SOSPETER ONYANGO 1ST APPLICANT

JACOB OCHOLA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicants herein filed an application dated 21/2/2025 and amended on 6/3/2025 seeking the following reliefs:
 - i. That this Honourable Court be pleased to call for and examine the records in Criminal proceedings before the Principal Magistrate's Court at Bondo CR. Case No. E1658/2021 R v Jacob Ochola Dacha & Another.
 - ii. That the Honourable Court revises the order issued by Hon. Stela W. Mathenge on 17/2/2025 and 21/2/2025 pursuant to Section 364 of the *Criminal Procedure Code*.
 - iii. That the Honourable Court be pleased to admit the Applicants to bail pending sentencing scheduled for 24/3/2025.
 - iv. That the bail terms be reasonable and consistent with the previous bail terms the Applicant were released on at the trial court.
 - v. That the 2nd Applicant be taken to Siaya County Referral Hospital or any other County Public Hospital for a comprehensive medical check-up and a comprehensive report on his health status and continued management and treatment of the 2nd Applicant be filed in court and served on the parties for follow up.



- vi. That the costs of the application be provided for.
2. The application is based on the grounds set out on the face thereof and by the supporting affidavit of Adrian Onginjo learned counsels for the Applicants sworn on even date.
3. The Applicants gravamen is *inter alia*; that the Applicants were convicted vide the judgment of Hon. Stella Mathenge on 12/5/23 and later sentenced by Hon. P. Nandi on 25/5/2023 to serve a two year non-custodial sentence (probation) which ran from 25/5/2023 to 25/5/2025; that the prosecution filed a revision of the sentence vide a letter dated 24/11/2023 challenging the sentence imposed by Hon. P. Nandi; that the revision was determined by Aburili J, on 3/12/2024 wherein she allowed the revision request and ordered the file to be transmitted to the trial magistrate for re-sentencing; that on 7/2/2025 the Applicants applied for extension of their bonds but that the same was declined by the trial magistrate; that they were remanded in custody at Siaya GK Prison; that the 2nd Applicant is hypertensive due to high blood pressure, arthritis and ulcers which have affected him for four years; that the trial court made an order that the 2nd Applicant be taken to hospital; that a request for renewal of bond was declined by the trial magistrate; that the 2nd Applicant has not been attended to medically and that his condition continues to deteriorate; that the trial magistrate is reported to be on leave until 24/3/2025 when the sentencing will be conducted; that the condition of the 2nd Applicant continues to deteriorate each passing day as the order to be taken to hospital has not been complied with; that the Applicants are the bread winners for their families; that the Applicants' homes were invaded by persons allied to the complainant due to their absence; that the Applicants request for bail is merited; that the Applicants will abide by any conditions or directions to be imposed by the court.
4. There was no response filed by the Respondent.
5. The application was canvassed by way of oral submissions.
6. Learned counsel for the Applicants reiterated the averments in the grounds and affidavit in support. He submitted that the dire situation of the 2nd Applicant needs consideration as the date for sentencing by the trial magistrate is still far. It was submitted that the Applicants are ready and willing to abide by conditions to be imposed by the court and that the Applicants are proposing that they be considered for a cash bail.
7. Learned counsel for the Respondent submitted *inter alia*; that the issue of the 2nd Applicant's illness has already been taken care of by the trial court when it made an order for treatment; that there is no evidence from prison that they are unable to treat the 2nd Applicant so as to require him to be taken elsewhere; that there is no need to interfere with the order of the trial court; that the matter is due for mention before the trial court on 13/3/2025 and that the Applicants can make their representation before the said court.
8. I have given due consideration to the application and the rival submissions. It is not in dispute that the Applicants had earlier been sentenced to serve under probation for a period of two years by Bondo Principal Magistrate's Court and that the same was later reviewed by Aburili J on 3/12/2024 following a request by the prosecution and that she set aside the probation order and ordered for a fresh sentencing by the trial court. It is not in dispute that the trial court now being seized with the matter has ordered the Applicants remanded in custody pending sentencing scheduled for 24/3/2025 and further that the trial magistrate declined the Applicant's request for extension of their previous bonds save only for an order that the 2nd Applicant be taken to hospital for medication. This has precipitated the present application for revision of those orders.



9. The revisionary power of the High Court is in Article 165 (6) and (7) of the Constitution which provides as follows:
- (6) The High Court has supervisory jurisdiction over subordinate courts and over any person, body or authority exercising a judicial or quasi- judicial function, but not over a superior court.
 - (7) For purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or 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.”
10. Looking at the record of the trial court, it is clear that upon the conviction of the Applicants and being placed in custody, they ceased enjoying the presumption of innocence and that the issue of whether they can be released on bond pending sentencing is at the discretion of the trial court. Indeed, the practice in criminal trials is that once an accused is convicted, his/her bond terms stand suspended unless the trial court in its discretion decides that such a convict would continue to be on bond pending the sentence. Already, the trial court has fixed the date for sentencing and further ordered the 2nd Applicant to be taken to hospital. The trial court is yet to conclude the matter and thus it must be allowed to discharge its duties as appropriate. The issue of bond pending sentence is still within the discretion of the trial court and likewise the issue of whether the 2nd Applicant has been attended to medically. The request by the 2nd Applicant that this court orders that he be taken to hospital and the report be filed in this court is erroneous since the matter is still with the trial court. Again, the Applicants having been convicted ceased to enjoy the presumption of innocence and that it is the discretion of the trial court to consider the same. The Applicants have also claimed that in their absence their homes have been raided and thus they need to be released so that they can go and protect their homes. It seems the Applicants are overstressing their wishes in that they are required to be present for their sentencing and thus it is appropriate that they wait for the trial court to deal with the matter before they can approach this court. It seems the Applicants appear to be impatient and that they would want this court to usurp the trial court’s mandate in the matter. I am satisfied that the trial court has already addressed the Applicants’ issues appropriately and that if the order to take the 2nd Applicant to hospital has not been complied with, then the trial court will deal with it appropriately. It transpired that the matter is being mentioned before the trial court and hence the Applicants can address these issues before it.
11. After considering all the issues raised herein, I find that the application for revision is premature and that the Applicants ought to let the trial court deal with the matter first before approaching this court. Consequently, the revision application dated 21/2/2025 and amended on 6/3/2025 lacks merit. The same is dismissed.

DATED AND DELIVERED AT SIAYA THIS 14TH DAY OF MARCH 2025.

D.KEMEI

JUDGE

In the presence of :

Opiyo.....for Applicants

Ombego.....Watching brief for Complainant

Mocha.....for Respondent

Ogendo.....Court Assistant

