



**Ochola v Republic (Criminal Revision E101 of 2025)
[2025] KEHC 5897 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5897 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL REVISION E101 OF 2025**

**DK KEMEL, J
MAY 13, 2025**

BETWEEN

PETER ALLAN JUMA OCHOLA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Learned Counsel for the Applicant vide a letter dated 7th May, 2025 has sought for revision of orders made by Hon. Manasseh (RM) in Ukwala PCCR No SOE 004/2025 Republic v Peter Allan Juma vide a ruling dated 8/4/2025 wherein the Applicant's request to be released on bond pending trial was declined.
2. The Applicant gravamen is inter alia; that he has been charged at Ukwala Law Courts in a Sexual Offence Case No E004/2025 in which he has entered a plea of not guilty and that the matter is scheduled for hearing in due course; that he approached the trial court for release on bond pending trial; that on 8/4/2025 the trial court declined his request despite supporting evidence vide a prebail report filed by the Probation Officer; that he is aggrieved by the trial court's refusal to release him on bond yet Article 49(1)(h) of the Constitution guarantees the right to bail on reasonable bond terms pending trial; that he now seeks this Honourable court to examine the lower court's record with a view to satisfying itself as to the correctness, legality, propriety and regularity of the trial court's ruling; that this court should exercise its supervisory, revisionary jurisdiction under the law and revise, vary, set aside the bail terms imposed and substitute the same with reasonable bond terms; that the application is in defence of the Applicant's liberty and fidelity of the Constitution and the Principles of due process; that the Applicant has been in remand for the last two months.
3. I have given due consideration to the applicants request. I have also perused the record of the trial court. It is not in dispute that the Respondent herein had pleaded not guilty to the charge in Ukwala PMCR SO E004/2025 and that the same is scheduled for hearing in due course. It is also not in dispute that the



Applicant had presented his request to be released on bond pending trial before the trial court which request was considered but was declined vide the trial court's ruling dated 8/4/2025. It is also not in dispute that the Respondent had through its investigating officer filed an affidavit sworn on 5/3/2025 wherein it was deponed inter alia; that intelligence report regarding missing and exploited children on 22/1/2025; that the Applicant herein was found to have stored child pornographic contents on his Google Drive Account; that the Applicant was arrested and his phones confiscated for forensic analysis; that several victims aged thirteen years, three years, two years and six months were rescued; that more suspects are still being pursued and that if the Applicant is released, he will jeopardize investigations; that the Applicant should not be released on bond.

4. The application was canvassed by way of oral submissions. Mr. Onyango averred that the revision is on bail terms by Ukwala Sexual Offence E004/25 and that he relies on the grounds set out vide the letter dated 7/5/2025; that the Applicant has remained in custody for about 50 days since his arrest; that the offence is attempted defilement and or engaging children on pornographic material; that the minors are currently under protection; that the Applicant's right have been violated under Article 49(1)(h) of the Constitution; that the pre-bail report was favourable but the trial court dismissed the same; that the trial court used inflammatory language thereby putting to question his impartiality; that no reasons have been given to justify denial of bond; that the continued detention constitutes a violation of the Applicant's right to be released on bond; that the Applicant is willing to abide by the terms of bond to be imposed.
5. Mr. Soita, learned counsel for the Respondent submitted that the trial court made orders to the effect that the Applicant should wait until the victims who are minors have testified. He further submitted that the Applicant is a close relative to the minors and that there is a likelihood of interference with the witnesses. It was further submitted that the investigating officer had presented compelling reasons for denial of bond. He further submitted that pre-bail reports are used by the courts as a guide and that the courts have discretion to make appropriate orders. That the trial magistrate was alive to the rights of the Applicant under Article 49(1)(h) of the Constitution and proceeded to direct that the Applicant do seek to renew his request for bond once the victims have testified. It was further pointed out that the trial court has directed that the case should proceed to priority basis and therefore the Applicant will thereafter apply for bond consideration.
6. I have considered the request for revision and the oral submissions. I find the issue for determination is whether the Applicant's request is merited.
7. The power of revision is donated to the High Court vide Section 362 of the Criminal Procedure Code and Article 165 (6) and (7) of the Constitution which are as follows: -

Section 362 CPC – 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.

Article 165 (6) Constitution - 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.

Article 165 (7) Constitution - For the purpose 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.



8. Being guided by the foregoing salient provisions of the law it is noted that the Applicant has already been charged before Ukwala Law Courts where he is facing two counts vide S.O E004/2025 and that he has already denied the charges. Upon the entry of a plea of not guilty by the trial court, the Applicant, ipso facto is deemed to be innocent until proved guilty and therefore he is entitled to the presumption of innocence until proved guilty. In that regard, he is entitled to be released on bond pending trial. Under Article 49 (1) (h) of the *Constitution*, the accused is entitled to be released on bond pending trial unless there are compelling reasons to be furnished by the prosecution not to be released on bond.
9. It is not in dispute that the Applicant sought to be released on bond by the trial court. The trial court did receive his request and that of the Respondent and came up with a ruling dated 8/4/2025. It is also noted that the investigating officer No 90xxx Corporal Everline Chipchirchir attached to DCI Anti Human Trafficking and Child Protection Unit filed an affidavit before the trial court wherein she averred inter alia; that the Applicant faces charges of defilement and child pornography; that they traced the Applicant through his Google Drive and managed to retrieve pornographic material and later rescued three minors aged thirteen years, two years and six months; that the said minors are still vulnerable and have been take to some rescue centres as arrangements are being made to place them and their mother under Witness Protection Program; that there are other accomplices who are still at large and that the Applicant is likely to jeopardize investigations and interfere with witnesses. It is noted that the trial court ordered that the issue of bond be revisited once the minors have testified. The trial court also has directed that the matter be fast trucked and that the same is scheduled for hearing on 14/5/2025 and that the Applicant will then seek to renew his quest for bond.
10. Looking at the record of the trial court as well as the ruling of the learned trial magistrate, I have not seen any irregularity, impropriety to warrant an order for revision. The reasons for denial of bond by the trial magistrate appear reasonable in view of the averments of the investigating officer vide her affidavit sworn on 5/3/2025 and therefore the Respondent presented compelling reasons warranting denial of bond to the Applicant at that stage of the proceedings. Hence, I am unable to fault the findings of the learned trial magistrate in his erudite ruling dated 8/4/2025. It is clear that the trial court has balanced the interests of both the Applicant and the Respondent's vulnerable witnesses and that once the vulnerable witnesses have testified on the 14/5/2025, the Applicant will be at liberty to revisit his request to be released on bond pending trial.
11. In the result, it is my finding that the revision sought by the Applicant dated 7/5/2025 lacks merit. The same is declined. The Applicant is directed to approach the trial court and renew his quest for bond pending trial once the minors have testified pursuant to the directions the trial court made on 8/4/2025.

DATED AND DELIVERED AT SIAYA THIS 13TH DAY OF MAY 2025

D. KEMEI

JUDGE

In the presence of:

N/A Peter Allan Juma Ochola.....Applicant

Onyango.....for Applicant

Soita.....for Respondent

Okumu.....Court Assistant

