



**Omondi v Republic (Criminal Revision E062 of 2025)  
[2025] KEHC 6392 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6392 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL REVISION E062 OF 2025**

**JM OMIDO, J**

**MAY 8, 2025**

**BETWEEN**

**RASHID OMONDI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The text of Article 49(2) of the [Constitution of Kenya](#) provides that:  
49(2). A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.
2. In [Republic v Danford Kabage Mwangi](#) [2016] eKLR the court, while considering the import of Article 49 of the [Constitution](#) observed as follows:  
“My understanding of Section 49(1)(g)(h) is firstly that the right of an arrested person to bond or bail in respect of any offence is solely at the discretion of the court seized of the application. Secondly, the only accused entitled to a right of an automatic bond or bail, are those charged with offences (which may be referred to as "petty offences") the punishment of which (if found guilty and convicted) is either a fine only, or imprisonment for a term of less than six months. Such offences are spread throughout the Penal Code, and other statutes containing penalty for breach thereof.” (Underlined emphasis is on Article 49(2) of the [Constitution](#)).
3. The charge that the Applicant faces in Nyando Chief Magistrate’s Court Criminal Case No. E329 of 2025 is one of offensive conduct contrary to Section 94(1) of the [Penal Code](#). The said provision of statute provides for a maximum sentence for the said offence to be six months imprisonment. The offence is therefore a misdemeanor and falls in the category of offences that are covered under Article



- 49(2) of the Constitution. Such offences are not subject to the compelling reasons test that is applied by courts in applications for considering denial of bond to an accused person under Article 49(1)h of the Constitution.
4. The application in respect of which this ruling is made seeks an order that this court exercises its supervisory jurisdiction over the decision of the trial court in the above matter, to defer (and effectively deny) the Applicant bond.
  5. When I called for the trial court's file, I received from the Nyando Chief Magistrate's Court a total of four files (Cr. Cases Nos. E329 of 2025; E330 of 2025; E332 of 2025; and E336 of 2025). It is not clear why all the files were forwarded to this court yet what I called for was only E329 of 2025.
  6. Be that as it may, I have had a casual perusal of all the four files and note that the Applicant is the accused person in all the files and is charged with various offences therein including the offences of offensive conduct contrary to Section 94(1) of the Penal Code (in E329 of 2025 and E332 of 2025); threatening to kill contrary to Section 223(1) of the Penal Code (in E330 of 2025); and assault causing actual bodily harm contrary to Section 251 of the Penal Code (in E336 of 2025).
  7. From the record of the trial court in E329 of 2025, the Applicant's bond was deferred "pending the finalization of other investigations" and the Applicant was effectively denied bond on an application by the prosecution basing the same on the ground that he had been charged with the offences in the other files and that he was being investigated on other offences that he is suspected to have committed.
  8. Section 362 of Criminal Procedure Code provides as follows:

The High Court may call for 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.
  9. The provision gives this court jurisdiction to review orders issued by the subordinate court for the purpose of satisfying itself as to the correctness, legality and or propriety of any finding, sentence or order recorded or passed and to the regularity of any proceedings.
  10. We have seen above that under Article 49(2) of the Constitution, an accused person who is charged with an offence are those charged with offences the punishment of which, if found guilty and convicted, is either a fine only, or imprisonment for a term of less than six months entitled to a right of an automatic bond or bail and shall not be remanded in custody.
  11. As I have said, Article 49(2)(h) does not apply to such petty offences and the prosecution cannot purport to present compelling reasons for the denial of bond of an accused person faced with such an offence.
  12. Having said so, I reach the persuasion that the application for revision is well merited as the Applicant ought to have been granted bond and/or released from custody automatically. I proceed to allow it. I set aside the order of the trial court of 28<sup>th</sup> April, 2025 deferring the Applicant's bond.
  13. I order and direct that pending the determination of the trial in E329 of 2025, the Applicant shall forthwith be released upon executing a personal bond of Ksh.5,000/- with own recognizance, within the trial court's file. No other security will be required.
  14. For avoidance of doubt, the orders issued herein on revision are in respect only of file No. E329 of 2025.
  15. All the four files from Nyando Chief Magistrate's Court to be forthwith transmitted to the said station.



16. This file is hereby closed.

17. Orders accordingly.

**DELIVERED (VIRTUALLY) DATED AND SIGNED THIS 8<sup>TH</sup> DAY OF MAY, 2025.**

**JOE M. OMIDO**

**JUDGE**

Applicant: No appearance.

For Respondent: Ms. Muema.

For Applicant: Ms. Okoth.

Court Assistant: Mr. Ngoge & Mr. Juma.

