



**Odundo v Director of Public Prosecution (Criminal Revision
E008 of 2025) [2025] KEHC 10522 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10522 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E008 OF 2025
RN NYAKUNDI, J
JULY 21, 2025**

BETWEEN

NICK OTIENO ODUNDO APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

RULING

1. This is a letter dated 12/2/2025 by Kesse & Kesse Advocates of Eldoret Criminal Case No. E553 of 2022 states as follows:

The court to exercise the Revisionary Jurisdiction of the High court as provided for under Art 165(6) (7) of the *constitution* as read together with sections 362 to 365 of the *CPC* to call for the record of Eldoret Criminal Case No. E553 of 2022 and have the file before the learned Hon. Duty Judge Criminal Division so as for the court to satisfy itself as to the correctness, legality, propriety and regularity of the ruling delivered by the trial court on the 10th December 2024

The Revision is premised on the following grounds; -

- a. That the court has without any justifiable cause allowed the accused person Bond cancelled
- b. That the medical reports which were to be produced were long produced
- c. That the applicant is greatly being prejudiced as he has dependants who have been left miserable
- d. That the applicant undertakes to abide by the conditions of the court.
- e. That there are good and sufficient reasons to warrant reinstatement of bond and alternative of cash bail



- f. That it in the larger interest of justice that this honorable court do grant the orders sought herein

In light of the above we pray;

- a. That this matter be certified urgent and heard *ex parte* in this first instance
- b. That the court record in Eldoret Criminal Case No. E553 be called for and placed before the learned duty judge
- c. That there be an order for the immediate reinstatement of the applicant bond or cash bail
- d. That the honorable court makes any other order that it may deem fit to grant

Decision

2. This application is governed by Art 165 (6) (7) of the [constitution](#) which reads as follows:
- (6) 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.
- (7) for the 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.
3. This constitutional imperative has to be construed in line with section 362 and 364 of the [CPC](#). The applicant is questioning the propriety, regularity, legality, correctness and justness of the decision by the lower court cancelling his bond terms issued under Art 49(1) (h) of the [constitution](#) as read with section 123 & 123(a) of the [CPC](#).
4. It is trite that judicial discretion - the result of its exercise is referred to herein as a discretionary decision – is exercised when a judge is granted a power under either statute (‘statutory discretion’) or common law that requires the judge to choose between several different, but equally valid, courses of action. As de Smith has stated:
- [The] legal concept of discretion implies power to make a choice between alternative courses of action. If only one course can lawfully be adopted, the decision taken is not the exercise of a discretion but the performance of a duty. To say that somebody has a discretion presupposes that there is no uniquely right answer to his problem. Discretionary decisions are those where the judge or magistrate has an area of autonomy, free from strict legal rules, in which the judge or magistrate can exercise his or her judgment in relation to the particular circumstances of the case. As Hawkins has observed, discretion is ‘the space.... Between legal rules in which legal actors may exercise choice.’ See SA de Smith and JM Evans (eds), De Smith’s [Judicial Review of Administrative Action](#) (4th ed, 1980) 278 and Keith Hawkins, ‘[The Use of Legal Discretion: Perspectives from Law and Social Science](#)’ in Keith Hawkins (ed), [The Uses of Discretion](#) (1992) 11,11.
5. The leading provisions of the law on review is more entrenched in the realm of [Civil Procedure Act](#) and [Rules](#) 2010 of Kenya under section 80 and Order 45 Rule 1. It has been established over time that review errors committed in the exercise of discretion include errors on the face of the record, errors of law, acting upon a wrong principle, allowing extraneous or irrelevant matters to guide the discretion, mistaking the facts and failing to take account of a material consideration or discovery of new evidence which was not available when the trier of facts was exercising the discretion in making the impugned decision.



6. It is worthy to note that the criminal justice system is the most prominent and public means by which a state may deprive any decision falling under its jurisdiction of their liberty, issues relating to the criminal justice process are intimately connected with human rights issues.
7. With respect to this application, the factors or principles that are to guide the review court in exercising discretion have been gleaned through together with the facts of cancelling the bond issued to the applicant. It follows that the applicant has not met the criteria upon which this court can be significantly influenced to set aside the impugned order. The best remedy is to direct the trial court to determine the armpit and scope of the charges levelled against the applicant on a priority basis within the next 45 days from today's ruling.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 21ST DAY OF JULY 2025

R. NYAKUNDI

JUDGE

Representation:-

M/s Sidi for the State

