



REPUBLIC OF KENYA



**Masikonde v Republic (Criminal Revision E645 of 2023)  
[2024] KEHC 3561 (KLR) (Crim) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3561 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL REVISION E645 OF 2023**

**LN MUTENDE, J**

**APRIL 11, 2024**

**BETWEEN**

**DOUGLAS TWALA MASIKONDE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Douglas Twala Masikonde approached this court through a Notice of Motion dated 9<sup>th</sup> October, 2023 seeking an order reversing and/or setting aside orders of the court presided over by Hon. B. Ochoi – SPM declining suitability of Naning’o Nagol as a surety for the applicant and in the result confirm her as suitable surety for the Applicant.
2. The application is premised on grounds that: On 7<sup>th</sup> August 2023 the applicant was arrested, charged with the offence of conspiracy to defraud and was released on a cash bail of Kshs. 3,000, 000/- or bond of Kshs 6,000,000 with a surety.
3. That on 14<sup>th</sup> September, 2023 the applicant presented a surety, Esther Wanjiru Mwangi, his wife and holder of title deed CIS Mara/Olokito/3585 whose suitability was declined by the court on grounds that the applicant had processed the title and registered it in the names of the title holder after his arrest.
4. Subsequently, the applicant presented his Aunt, Naning’o Nagol his paternal aunt a holder of Title CIS/Mara/Olopito/9107 and upon perusal of the document the court stated that no restriction had been placed on the title by the Investigating Officer hence she could not be approved as a surety.
5. That on 5<sup>th</sup> October, 2023 Naning’o Nagol appeared before court and confirmed that the required restriction had been placed on the title deed, and, though the prosecution did not object to the suitability of the surety, the court declined the suitability without giving valid reasons.



6. It is hence argued that declining to approve the sureties on flimsy reasons was a mockery of Article 29 and 49 of the Constitution.
7. It is further contended by the applicant that the learned Magistrate was unfair in his decisions.
8. The application is not opposed by the State/Respondent through learned prosecution counsel, Mr. Mutuma.
9. I have considered the application affidavit in support and oral arguments by the applicant and the respondent.
10. It is not in doubt that the applicant herein was granted bail/bond pursuant to the requirement of the Constitution (See Article 49).
11. The responsibility of determining suitability of a surety lies with the court. The input of the Police and Prosecution guides the court in reaching an informed decision.
12. The power of the High Court to exercise revisional jurisdiction over proceedings of the subordinate court is provided for by Statute. Section 362 of the Criminal Procedure Code (CPC) provides that:
 

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.
13. The law is very clear, revisional jurisdiction is only exercised where the subordinate court grants an order which is incorrect, illegal or irregular.
14. This is a matter where the trial court exercised its discretion in approval of surety. To its mind, the two (2) sureties who were availed were not suitable.
15. It is urged that the court did not give reasons for declining to accept the two (2) ladies as sureties. But the grounds on the body of the application and the averment of Counsel representing the applicant, reasons were given.
16. In the case of Sanjaysinh Ramrao Charan Vs. Dottatray Galabrao Phalka & Another reported in 2015 AIR SCW 784. The Supreme Court of India observed that;
 

“ 14. ....Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the revisional Court is not justified in setting aside the order, merely because another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of Criminal Jurisprudence”
17. The subordinate court has the discretion to approve a surety that it finds appropriate for purposes of ensuring the accused person attends court whenever required. The reason given for disallowing the quest of the proposed sureties to take up the responsibilities by undertaking to ensure the accused's attendance in court as required are captured by the application. There is nothing irregular, illegal, incorrect or improper that would call for revision.
18. It is worth noting that revisional powers are exercised sparingly to prevent abuse of court process. The supervision of the subordinate by the High Court should not be marked with extreme excessiveness.



19. From the foregoing, I find the application lacking merit. Accordingly it is dismissed.

20. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT  
NAIROBI THIS DAY OF 11<sup>TH</sup> APRIL, 2024.**

**L. N. MUTENDE**

**JUDGE**

In The Presence Of:

Court Assistant – Gladys

