



**Omiemo v Republic (Criminal Revision E097 of 2024)  
[2024] KEHC 10560 (KLR) (6 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10560 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL REVISION E097 OF 2024  
WM MUSYOKA, J  
SEPTEMBER 6, 2024**

**BETWEEN**

**LINUS OMIENO OMIENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Revision arising from an order, in Busia CMCRC Miscellaneous Application No. E101 of 2024, by Hon. TA Madowo, Senior Resident Magistrate, SRM, of 25th June 2024)*

**RULING**

1. The revision cause herein was initiated by way of a letter, dated 26<sup>th</sup> June 2024. It seeks revision of an order made on 25<sup>th</sup> June 2024.
2. The trial court had allowed the police to detain the applicant for 10 days, to enable completion of investigations. The complaint by the applicant was that, although he had applied for bond, his plea was neither granted nor denied, for the court did not mention anything about that, except that it extended the time within which he could be held in custody, before being arraigned.
3. The matter was placed before me, on 26<sup>th</sup> June 2024, and I directed that it be argued before me on 27<sup>th</sup> June 2024, given that it turned on the fundamental right to freedom. It was argued orally on the said date, by Mr. Ouma for the applicant, and Ms Mutela and Mr. Mumo for the Republic. Mr. Ouma argued that the order of 25<sup>th</sup> June 2024 was ambiguous, to the extent that it neither granted bail, nor denied it, and, in any event, no reasons were given for denying bail. The Republic argued that the order bore no ambiguity.
4. The parties placed before me *Michael Rotich v. Republic* [2016] eKLR (Kimaru, J), *Betty Jemutai Kimeiywa v. Republic* [2018] eKLR (Muriithi, J) and *Chris Philip Obure v. Republic* [2020] eKLR (Wakiaga, J), to guide me on the matter.



5. I reserved 2<sup>nd</sup> July 2024, as the date for delivery of the ruling on the matter, but the passing on of my mother, on 30<sup>th</sup> June 2024, meant that I had to take compassionate leave to deal with that bereavement, and I was unable to prepare and deliver the ruling on the date scheduled, and I regret the prejudice that that caused the parties. It could be that the matter has since been overtaken by events.
6. The application, that the Republic had made, was for extension of time to detain the applicant pending completion of investigations. It is provided for, under section 36A of the *Criminal Procedure Code*, Cap 75, Laws of Kenya. The court allowed 10 days. The matter was not an arraignment for plea, where the issue of bond would arise. It was for extension of time to detain, for the purposes of investigations. It cannot be that extension of time to detain is sought, and then admission to bond is sought at the same time. It is a question of the court either allowing the extension or not, for it cannot allow the same, yet admit the suspect to bond, for that would defeat the purpose of the extension.
7. Did the trial court act illegally, or unlawfully, or irregularly, or improperly, in grant of the extension? The applicant has not demonstrated any illegality, or irregularity, or impropriety in the manner the order was made.
8. I find no basis for the revision sought, and I hereby disallow the request for it. It is so ordered.

**DELIVERED, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 6<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Otieno, instructed by Messrs. Masiga Wainaina & Associates, Advocates for the applicant.

Ms. Mutela and Mr. Mumo, instructed by the Director of Public Prosecutions, for the Republic.

