



**Wanyonyi v Republic (Miscellaneous Criminal Application
E027 of 2023) [2023] KEHC 21935 (KLR) (1 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CRIMINAL APPLICATION E027 OF 2023
DO CHEPKWONY, J
AUGUST 1, 2023**

BETWEEN

HEMAN WEKESA WANYONYI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is before this court for determination is a Notice of Motion application dated May 16, 2023 filed by the Applicant under Article 50 of the [Constitution](#) of Kenya and Section 262 of the [Criminal Procedure Act](#) which seeks the following orders:
 - a. Spent;
 - b. That the Orders made on May 10, 2023 by the Honourable J A Agonda PM directing that the sum of Kshs 200,000 be removed from the applicant's KCB Bank account number xxxx and transferred to Benard Wanyonyi Naulikha's KCB account number xxxx be stayed pending the inter parte hearing of this application and until further orders of the court.
 - c. That the Orders made by the Honourable J A Agonda PM the trial magistrate on May 10, 2023 reviewing the previous order of refund of cash bail be varied and/or set aside and be substituted with an order that cash bail be refunded to the applicant herein.
 - d. An Order in the nature of revision do issue calling for the record and examination of the proceedings of May 10, 2023 in Ruiru SPMCC No 25 of 2021 R v Heman Wekesa Wanyonyi for the purpose of satisfying your Lordship as to the correctness, legality or propriety and regularity of the said proceedings.
 - e. A declaration that the Honourable J A Agonda Pm became functus officio after delivering the judgment hence could not entertain further application on the matter.



- f. Costs of this application be provided for.
2. The Application is based on the grounds set out on the face of the application and the Supporting Affidavit of Heman Wekesa Wanyonyi sworn on May 16, 2023.
 3. The Applicant states that he was charged, tried and acquitted by the trial court in Ruiru SPMCC No 25 of 2021 R v Heman Wekesa Wanyonyi whereby the trial court made an order for refund of the cash bail of Kshs 200,000/= into the Applicant's account number xxxx and the court thereafter became functus officio.
 4. The Applicant states that on April 24, 2023, Benard Wanyonyi Nailukha who was not a party to the proceedings filed an application which the Applicant's Counsel filed Grounds of Opposition. However, on the date of May 10, 2023, the court declined to hear the application but instead allowed the same on what was termed as an administrative error.
 5. The Applicant contends that through the ruling of May 10, 2023 of the trial court, a sum of Kshs 200,000 was removed from his account and transferred to Benard Wanyonyi Nailukha's bank account. He holds that the monies do not belong to Benard Wanyonyi Nailukha who is his absentee father and whose interest was only to obtain the monies. The Applicant also holds that he was the rightful depositor of the cash bail and therefore the application should be allowed.
 6. The Respondent filed Grounds of Opposition dated May 25, 2023 on the grounds that the cash deposit was to be refunded to the rightful depositor who it was established was Benard Wanyonyi Nailukha.

Analysis and determination

7. This court has considered the application by reading through the grounds upon which it is premised and those in opposition thereof. It is trite that the power to determine an application of this nature is made in exercise of the supervisory jurisdiction of the High Court in criminal cases provided for under Sections 362 and 364 of the *Criminal Procedure Code*. Section 362 provides that:
 362. 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.Section 364 provides:-
 364. Powers of High Court on revision (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
 - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.



- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

8. In revision matters, the High Court’s jurisdiction was addressed in the case of [*Joseph Nduvi Mbuvi vs Republic*](#) [2019] eKLR where the court held as follows,

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

9. In this case, the main issue relates to the refund of cash bail. It is the general overview that cash bail should be refunded to the rightful depositor. However, the onus lies upon the applicant to prove that he was the one who made the deposit.
10. The Judiciary; court e-receipt No DEU 00xxxxx indicates that the amount was paid by the applicant, Heman Wekesa Wanyonyi but the KCB Bank deposit slips attached are completely illegible as to who made the deposit and/or the account details.
11. In absence of such clear copies for proof of payment, the court is constrained not to issue any orders without them. The Applicant is thus directed to provide a legible KCB receipt of the payment made on April 14, 2021 within 7 days from the date of this ruling, in default the application shall stand as dismissed. Mention on August 23, 2023 for parties to confirm compliance and take directions on a ruling date.

It is so ordered.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 1ST DAY OF AUGUST, 2023.

D. O. CHEPKWONY

JUDGE

In the presence of:

MR. Nyongesa counsel for the Applicant

Court Assistant – Nancy/Martin

