

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION NO E058 OF 2025

JOHN G.K.O. MWERESA ALUSE.....
APPLICANT

VERSUS

REPUBLIC.....
RESPONDENT

RULING

INTRODUCTION

1. In his Notice of Motion application dated and filed on 24th October 2025, the Applicant herein sought that his bond that was cancelled in **Hamisi MCCR No 311 of 2019** pending sentencing be reinstated.
2. He swore an Affidavit in support of his said application on 24th October 2025 and contended that the bond was cancelled without any justification on account of him being a flight risk. He asserted that he had attended proceedings in the lower court since 2019 and had never absconded.
3. It was his contention that he had suffered mental anguish, uncertainty and hardship as a result of the cancellation of the said Bond. To demonstrate that he was not a flight risk, he swore and filed a Further Affidavit on 30th October 2025. He explained that his Passport was burnt in 2015 and that he had not travelled outside the country since 2022.
4. He added that he was advanced in age and a family man. He furnished the court with a letter from the Officer in Charge Kisumu

Maximum Prison dated 28th October 2025 wherein it was indicated that he was suffering Peptic Ulcers, hypertension and allergic rhinitis requiring close monitoring. He therefore urged this court to allow his application.

5. In response to the said application, on 29th October 2025, Faith Koech, Prosecution Counsel swore a Replying Affidavit on behalf of the Respondent herein. The same was filed on even date. The Respondent argued that whereas bail/bond was a constitutional right, it could be denied if there were compelling reasons. It argued that the Applicant's health condition was not an exceptional circumstance for the bond to be reinstated. It emphasised that the Applicant had already been convicted and hence, he was no longer enjoying the presumption of innocence. It therefore urged this court to dismiss his application.
6. In view of the urgency of the matter bearing in mind the Applicant was to be sentenced on 11th October 2025, this court found it prudent to proceed to deliver its decision based on the affidavit evidence that both parties relied upon in their entirety.

LEGAL ANALYSIS

7. Notably, Article 49(1)(h) of the Constitution of Kenya, 2010 provides as follows:-

“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

8. It was evident from the aforesaid provision that although bail/bond was a constitutional right, it could be denied if there were compelling reasons not to grant the same. The Applicant had enjoyed this constitutional right throughout his trial as he had demonstrated that he was not a flight risk and had met all the conditions of being granted bail/bond.
9. It was also clear that bail/bond was a right that was given to an accused person to guarantee his or her right of fair trial in an ongoing trial. Indeed, Article 49(1)(h) of the Constitution of Kenya provided that that right could be granted pending a charge or trial. Whereas there was no clear provision of when bail/bond could be cancelled, this court was persuaded to find and hold that that right ceased immediately an accused person was convicted as trial would have been concluded.
10. Although the High Court had power and jurisdiction to supervise a subordinate court, it could not infringe on its power to sentence. A trial court could either impose a custodial or non-custodial sentence. A trial court, therefore, retained its discretion to cancel the bail/bond while a convicted person awaited sentencing because such person no longer enjoyed the right of presumption of innocence.
11. Currently, it was not known what sentence the Trial Court would impose upon the Applicant herein. The letter from the Officer-In- Charge Kisumu Maximum Prison was a mitigation document to influence the Trial Court on the nature of sentence that it could

impose on the Applicant herein. Ordering a reinstatement of bond at this juncture would be pre-empting the nature of the sentence the Trial Court intended to mete out to the Applicant herein. Indeed, reinstating the bond would be tantamount to indirectly giving it a direction that it should not impose on the Applicant a custodial sentence.

12. The jurisdiction of this court on the nature of the sentence that could be imposed on the Applicant herein could only be invoked after the Trial Court had pronounced itself on the same and become *functus officio*.

13. Cancelling of bond after a conviction was not unusual and was actually the norm as the accused person was no longer deemed to be innocent. Once convicted, such accused person became a guest of the State. He or she could also be released on a non-custodial sentence during Sentencing depending on how the Pre-Sentence Report, if at all directed to be filed, had recommended. A conviction was, therefore, a compelling reason to cancel bail/bond after conviction.

14. In a nutshell, it was the considered view of this court that the present application was premature and that reinstating any bail/bond terms even on account of the Applicant's ill-health, if at all, would be pre-empting the power and jurisdiction of the Trial Court and curtailing its discretion on the nature of sentence that it wished to impose on the Applicant herein. Acting otherwise would be to usurp the powers of the Trial Court.

15. It is for that reason that this court did not address itself to the merits or otherwise of the letter from the In-Charge Kisumu Maximum Prison but left it to the Trial Court to consider and determine its relevance and weight during sentencing, if at all it deemed the same to be pertinent.

DISPOSITION

16. For the foregoing reason, the Applicant's Notice of Motion application dated and filed on 24th October 2025 was not merited and the same be and is hereby dismissed.

17. Orders accordingly.

DATED and **DELIVERED** at **VIHIGA** this **30th** day of **October** 2025

J. KAMAU
JUDGE