



**Lusenji v Republic (Criminal Revision E142 of 2024)
[2025] KEHC 14784 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14784 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E142 OF 2024
NIO ADAGI, J
OCTOBER 23, 2025**

BETWEEN

PETER MULAMULA LUSENJI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Peter Mulamula Lusenji #led the notice of motion dated 12th November 2024 pursuant to Sections 123 (3), 362 and 364 of the Criminal Procedure Code, Articles 165(6) (7), 21(1), 50, 159 and 259 of *the Constitution* of Kenya and all other enabling provisions of the law. He prayed that this court reinstates his cash bail of Kshs.200,000 forfeited to the state on 17th October 2024 and that the court should further order that the Applicant to surrender his passport to the court and provide a surety to assure court that he will be attending court without fail. Also, no prejudice shall befall the Respondent and the complainants and justice will still prevail should the court allow this application. The application is premised on grounds on the face thereof and reiterated in the supporting affidavit of similar date sworn by the Applicant.
2. The application is not opposed by the State, however it is opposed by the Complainant through his advocates on record contending that the application is devoid of merit and should be dismissed.
3. The brief facts are that the Applicant is the accused in Kangundo Chief Magistrate’s Court criminal Case No E568 of 2023 Republic v Peter Mulamula Lusenji. On 12th June 2024 and 25th July 2024, he was said to be unwell and did not attend court causing the Court to issue Warrants for his Arrest and a Mention date was set for the 25th of July 2024.
4. On the 25th of July 2024, again the Applicant did not attend court and a mention date was set for the 18th of September 2024.



5. On the 5th of September 2024, the Applicant was presented in Court, after being arrested pursuant to the Warrants of Arrest that had been issued.
6. Upon being presented in court, the Applicant stated that he had not met his agreement with the Complainant in settling the case as earlier directed for the reasons that he could not meet the demands the Complainant was putting forward.
7. The trial court set the 26th of September 2024 for a ruling on whether the Applicant's bond terms would be cancelled. Further, the trial court asked the Applicant and the Complainant to attempt to resolve the dispute out of court before then if possible.
8. On the 26th of September 2024, the Applicant through his Advocate, had filed an application dated 11th September 2024 seeking for the Applicant's cash bail not to be cancelled for the reason that the Applicant had been admitted in hospital for long, hence why he failed to attend Court, the application was opposed by both the Prosecution and the Counsel watching brief for the Complainant.
9. The trial court ordered that the DCI, KBC Police Station verify whether the Medical Reports produced by the Applicant were genuine and had emanated from Kakamega Level 5 Hospital. The matter was set to be mentioned on the 3rd of October 2024.
10. On the 3rd of October 2024 the Deputy Medical Superintendent and the Investigating Officer appeared in Court to testify about the documents presented by the Applicant. The Applicant too was present together with his Advocate.
11. The Deputy Medical Superintendent Kakamega Level 5 Hospital by the name Dr. Dickson Mchana, Reg. No. A4876 testified that he had worked in the said hospital for 14 years, and that the Medical Reports produced by the Applicant, though claiming to have originated from Kakamega Level 5 Hospital, had in actual sense, not emanated from the said hospital.
12. He further testified that Dr. Nyakwara, who had supposedly signed the documents, had left that hospital in August 2023, long before the period which the Applicant claims to have been admitted there. He also testified that the stamp on the documents produced by the Applicant was different from the one that was used by the said hospital.
13. On cross examination, Dr. Dickson Mchana, stated that he was the Deputy Medical Superintendent and Pathologist, and that he had discussed the Applicant's medical report with the Head Superintendent called Dr. Christian Nanda who knew that he was in Court.
14. The Investigating Officer CPL Roki Kea, testified that while investigating whether the Applicant's Medical Reports were genuine, he discovered from a letter written by the Deputy Superintendent; Dr. Mchana, produced as Exhibit 1, that the letter produced by the Applicant dated 20/08/2024 did not emanate from Kakamega Level 5 Hospital for the reasons that:-
 - a. Dr. Nyakwara had not worked in Kakamega Hospital since August 2023.
 - b. Dr. Nyakwara had denied authoring the report.
 - c. The Reference Number 521, the Inpatient Number did not exist in the Hospitals Records.
 - d. The Stamp used was not the Hospitals Official Stamp.
15. Having heard the witnesses, the trial court scheduled its Ruling for the 17th of October 2024.



16. On the 17th of October 2024, the trial court found that indeed the documents produced by the Applicant were not genuine and subsequently cancelled the Applicant's bond terms pending the hearing and determination of the matter.
17. It is following the above trial court's ruling and finding that the Applicant filed the instant application which was canvassed by way of written submissions. The Applicant's submissions are dated 13th May 2025 filed by the law firm of JGS LAW LLP whilst the Complainant's submissions are dated 29th May 2025 filed by Mundia & Mwangi Co. Advocates. The Respondent did not file submissions.

Analysis and Determination.

18. I have looked at the trial court file, being Kangundo Chief Magistrate's Court Criminal Case No. E568 of 2023 Republic v Peter Mulamula Lusenzi and considered the application, the response, and the written submissions filed by the Applicant and the Complainant. The sole issue for my determination is whether the Applicant should be granted the revisionary orders sought.
19. The power of this court in its revisionary jurisdiction is founded under Section 362 of the Criminal Procedure Code (cap 75) Laws of Kenya which provides that:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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.”
20. Article 165(6) of *the Constitution* of Kenya provides that:

“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.”
21. Consequently, this court has jurisdiction to entertain the instant application.
22. While cancelling the Applicant's bond terms, the trial Magistrate stated as follows:-

“the Applicant claimed that he was sick and had not carried the medical report. This report was filed by his advocate Mr. Majimbo who claimed the Applicant was admitted at Kakamega General Hospital for a long time. Dr. Mchana demonstrated that the medical report did not emanate from Kakamega Hospital. The inpatient number did not exist in their records and Dr. Nyakwara was not their doctor. What more compelling reasons does the court require?

It would not be in the interest of justice to reinstate his bond. As such, the bond terms are cancelled. The Accused will be in remand pending the hearing and determination of the matter.”
23. What I can pick from the ruling is that the trial court considered that Dr. Mchana demonstrated that the medical report did not emanate from Kakamega Hospital. The inpatient number 521 did not exist in their records and Dr. Nyakwara was not their doctor and proceeded to cancel the Applicant's cash bail vide a ruling delivered on 17th October 2024.
24. I also note that the Investigating Officer CPL Roki Kea, testified that while investigating whether the Applicant's Medical Reports were genuine, he discovered from a letter written by the Deputy Medical



Superintendent; Dr. Mchana, produced as Exhibit.1, that the letter produced by the Applicant dated 20/08/24 DID NOT emanate from Kakamega Level 5 Hospital for the reasons that:-

- a. Dr. Nyakwara had not worked in Kakamega Hospital since August 2023.
 - b. Dr. Nyakwara had denied authoring the report.
 - c. The Reference Number 521, the Inpatient Number did not exist in the Hospitals Records.
 - d. The Stamp used was not the Hospitals Official Stamp.
25. Having carefully perused and analysed the trial court's record, I must say that Dr. Dickson Mchana who testified in court was said to be the Deputy Medical Superintendent and Pathologist at Kakamega hospital. He did not explain why he was the one who had come to court to testify on behalf of the hospital and not the Head Superintendent called Dr. Christian Nanda. The trial court's record does not show whether Dr. Mchana was authorized by the hospital or by Dr. Nanda to testify in court in the case even though he saw the report and knew that he was in court. Did Dr. Nanda know he was in court for this case?.
26. Dr. Mchana did not state whether he was conversant or familiar with the said hospital's records taking and keeping so as to be in a position to state whether the inpatient number 521 did not exist in their records. He did not also avail copies of the hospital's available inpatient records for the particular period to confirm that indeed inpatient No.521 did not exist in the hospital records.
27. It is not disputed that Dr. Nyakwara who is said to have signed the Applicant's medical report worked at Kakamega Level 5 hospital at some point. Further, no proof of the said Dr. Nyakwara having denied authoring the Applicant's medical report was submitted before court. If truly Dr. Nyakwara was aware of such a serious issue against him. I don't think he would have sat back silently without coming to court to clear his name. I am persuaded by the Applicant's position that it is not his fault if the doctor that signed the report no longer works at the Kakamega Level 5 hospital. The Applicant is not an employee of the hospital thus, he could not know who works at the hospital or not. He was just a patient who went to the hospital where he was admitted and treated and obtained the Medical Reports from. The fault is on the hospital if the doctor who signed the report no longer worked there. It was upon the Investigating Officer to bring Dr. Nyakwera before court to dispute that he authored the Appellant's Medical Reports which he is said to have denied.
28. It was also alleged that the Stamp used on the Applicant's medical report was not the Hospital's Official Stamp, however this allegation was not substantiated. No sample of the hospital's official stamp was placed before the trial court for comparison.
29. On the foregoing, it is my considered view that the trial court was wrong and misguided by relying on the reasons set out in the ruling to cancel the Applicant's bond terms as it did.
30. The upshot of the above analysis is that the notice of motion application dated 12th November 2024 is found to be merited and is allowed. The cash bail of Kshs.200,000/= that was cancelled and or forfeited in Kangundo Chief Magistrate's Court Criminal Case No. E568 of 2023 Republic v Peter Mulamula Lusenji is hereby reinstated.
31. The Applicant shall surrender his passport to the trial court and shall provide two contact persons who will ensure that he will be attending court without fail.
32. The cash bail deposited in this matter to be released to the depositor.
33. The trial court file be remitted back to the trial court.



34. The Applicant will appear before the trial magistrate on 11th November 2025 to take directions in the case.

Orders accordingly.

***RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 23RD OCTOBER 2025.**

NOEL I. ADAGI

JUDGE

