



**Waititu Babayao v Republic (Anti-Corruption and Economic Crimes Appeal E006 of 2025)
[2025] KEHC 14925 (KLR) (Anti-Corruption and Economic Crimes) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14925 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES APPEAL E006 OF 2025**

LM NJUGUNA, J

OCTOBER 22, 2025

BETWEEN

FERDINAND NDUNGU WAITITU BABAYAO APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein moved this court by way of an oral application which he made through his Counsel when this case came up in court on the 6th October, 2025. Mr. Mutuku the learned counsel for the appellant/applicant applied to the court for reduction of the terms of the bond.
2. On 31st July, 2025 this court delivered a ruling for the application dated the 3rd June, 2025 in which the applicant herein sought among other orders; review, variation and setting aside of the Orders dated the 3rd March, 2025 dismissing the applicant's application for bail/bond pending the hearing and determination of appeal, and in its place thereof, the applicant be granted bail/bond pending appeal, upon such terms and conditions as the Honourable court may determine.
3. In the alternative, the applicant sought for an Order suspending execution of the sentence in Anti-Corruption Case No. 22 of 2019: R vs Ferdinand Waititu & 12 others pending the hearing and determination of the appeal.
4. Upon hearing the application, the Court allowed the application and set aside the orders and in its place, admitted the applicant to bail/bond pending the hearing and determination of the appeal on **CONDITION** that he procures an acceptable bank Guarantee for the payment of the entire fine of Ksh.53, 500,000 to the credit of the court/Judiciary.



5. Counsel stated that since this court issued the orders on the 31st July 2025, his client has been unable to meet the terms of the bond and he is still in Kenyatta National Hospital, as the previous application had been based on the health of the applicant. He asked the court to consider variation from bank Guarantee to any other form of Security.
6. The applicant offered to provide a title deed or bonds or any other acceptable deed that would suffice in place of cash or in the alternative, he be allowed to deposit cash with a reduced amount of Ksh.20,000,000.
7. The application was opposed by Mr. Monda, the learned counsel appearing for the respondent. He stated that the application has no legal standing in law and that the court has already exercised its discretion in the circumstances, and failure to comply is not a basis for review. He submitted that what the applicant is asking is for the court to change the nature of the security and vary the orders.
8. He further submitted that the court cannot be invited into the internal processes between the applicant and his bank, yet, the applicant himself and not his counsel offered a bank Guarantee. Counsel argued that the applicant herein is a convict and not a person facing trial in the first instance, and, therefore not entitled to presumption of innocence. It was his submission that this is a court of law and not a court of mercy and the guiding principle should be the law and not mercy, and that, Jurisdiction of the court can only be exercised within the law and the court cannot arrogate to itself jurisdiction that has not been conferred by a Statute. He termed the applicant's application as a tactic to distort the hearing of the appeal.
9. In rejoinder, counsel for the applicant denied that the application has been made with the intention of stalling the hearing of the appeal, and stated that he made an oral application in order to save time. He reiterated that the court has powers to vary its earlier orders and whether or not the applicant is a convict is neither here nor there. He urged the court to grant the application.
10. The court has considered the oral application and the submissions that were made by both the applicant and the respondent in support of, and in opposition to the same. The only issue for determination is whether the applicant's oral application for reduction and/or variation of bond terms has merits.
11. In determining this application, the first port of call is the applicant's affidavit in support of his application dated the 3rd June, 2025 in which he personally offered to procure a bank guarantee for the payment of the entire fine of Ksh.53,500,000 to the credit of the court/Judiciary or as the court may direct, as a guarantee that the State stands to lose nothing in the event that he is admitted to bail pending the hearing of the appeal. It is as a result of that pledge that this court reviewed its order of 3rd March, 2025.
12. The application dated the 3rd June, 2025 was for review of this court's earlier Orders of 3rd March, 2025. The applicant is again asking this court to further review its orders that it issued on the 31st July, 2025. It is my considered view that no good grounds have been advanced by the applicant to persuade this court to review the orders. The applicant himself made an offer for a bank guarantee and for him to do so, he must have known what it would entail to procure the Guarantee and that, he was ready, able and willing to meet his part of the bargain to procure the same. He cannot now turn around and say that he has not been able to meet the terms of the bond.
13. The court has noted with concern the delay on the part of the applicant and his co-appellants in having the appeals finalized. The appeals were ready for hearing as early as the Month of March when the Court gave directions on filing of submissions but instead, the appellants have resulted to filing of



numerous applications which have derailed the hearing of the substantive appeals culminating to the orders of 17th September, 2025 to have the appeals prosecuted within 120 days from 1st October, 2025 failing which, the appeals shall stand dismissed.

14. It is in the interest of justice and prudent use of judicial time to have the appeals heard and determined rather than to keeping engaging the court in applications.
15. In the end, and for the reasons that this court has given above, I find that the oral application has no merits and the same is hereby disallowed.
16. It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 22ND DAY OF OCTOBER 2025.

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L.M. NJUGUNA

JUDGE

In the presence of: -

Mr. Mutuku for the Appellant/Applicant

Mr. Swaka for the Appellant in E007/2025

Miss Mwamburi appearing with Mr. Mwasaru, Miss Mwilu and holding brief for Mr. Monda for the Respondents

Court assistant – Adan

