



**Muthui v Odpp (Miscellaneous Application E142 of 2024)
[2025] KEHC 16552 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16552 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E142 OF 2024
SM MOHOCHI, J
NOVEMBER 12, 2025**

BETWEEN

PATRICIA WANGUI MUTHUI APPLICANT

AND

ODPP RESPONDENT

RULING

1. This is a Criminal Revision Application. Patricia Wangui Muthui is an employee of Nakuru County Government and Aunty of Nicholas Mwangi Wangeci who is an Applicant as well as an accused person in Nakuru CC No SO153 of 2019.
2. The Applicant Nicholas Mwangi Wangeci was on the 30th September 2019 certified as “unfit to stand trial” on the 29th March 2023 the trial court cancelled the accused persons bond and ordered him to be detained at Mathare Mental Hospital for three months.
3. The Dilemma at play is that the trial magistrate in exercise of his discretion elected to cancel bond in a situation clearly not occasioned by the Applicant but rather a mental health condition.
4. This Court Afforded the state an opportunity to participate by filing written submissions but the prosecution counsel elected to let the court deal with this matter.
5. Nicholas Mwangi Wangeci has been unable to stand trial owing to his mental health condition he accordingly benefits from the legal regime relating to persons living with mental health conditions.
6. Currently a person found unfit to stand trial can either be held in a psychiatric facility for treatment and periodic judicial oversight to ensure when fit then the trial court may proceed with the trial.
7. The ODPP has the option to withdraw the charges and file fresh charges where upon treatment such an accused person is found and deemed fit to stand trial.



8. In this instance Nicholas Mwangi Wangeci was awaiting trial when his bond was canceled on the basis that he was a risk to society. This court has reviewed the trial court proceedings and finds that no basis was laid by the prosecution as to the risk he posed and the court did not exercise its discretion judiciously in opting to place him in custody.
9. This court notes that the mental status of the Applicant was never a secret in fact as early as on the 3rd July 2020. The Probation Officer Mr. Murithi Kiraithe in his report observed that Nicholas Mwangi Wangeci was not a flight risk he had close family and community ties, he seemed to be mentally retarded, had difficulties in communicating and that his Aunty was willing to help him raise any form of bail and bond and ensures he complied with the set conditions.

Issue for determination

10. The issue for determination is whether the Applicant has established a case for revision based on the provisions of Article 165 (6) of *the Constitution* and under Section 362 of the Criminal Procedure Code.

The Law

11. The High Court power of revision is set out in Article 165 which provides:
 - (6) 6) 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 over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
12. Section 362 of the Criminal Procedure Code, empowers the High Court to call 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.
13. Section 364(1) of the Criminal Procedure Code provides: -

“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 his 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 section 354, 357 and 358, and may enhance 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.”
14. Article 165 of *the Constitution* bestows supervisory jurisdiction over subordinate courts and tribunals.



15. Section 2B of Mental Health Amendment Act Cap 248 places a duty on persons who come into contact with persons suffering from mental diseases. The section provides; -

2B. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles—

- a. the promotion and fulfilment of the right to the highest attainable Standard of health as enshrined under Article 43 of *the Constitution*;
- b. preservation of the freedom and dignity of every human being;
- c. the fair and equitable treatment of persons with mental illness;
- d. the protection of persons with mental illness from discrimination;
- e. accountability of duty bearers and transparency in the implementation of this Act; and
- f. coordinated public participation in the formulation and implementation of policies and plans related to care and protection of persons with mental illness; and
- g. that interventions for the care and protection of persons with mental illness are based on objective information and methods and monitoring mechanisms and regular evaluations are established, thus ensuring transparency in the management of facilities and care of persons with mental illness. (emphasis mine).

16. The duty is on all persons in the performance of their duties thus the prosecutors and courts alike must give effect to this provision by ensuring that at the earliest opportunity persons afflicted by a disease of the mind are not put on trial when they should be diverted to mental care institutions for purposes of care, protection and treatment.

17. It is the Duty of the trial court under the circumstances to establish whether such a person found unfit to stand trial has a family willing to take care of him while he/she undergoes psychiatric treatment.

18. This Court can only disturb the exercise of discretion where it is apparent that the same was fettered.

19. It is beyond doubt that Nicholas is a person living with a mental health condition and is currently unfit to stand trial. He was awaiting trial and had been admitted to bail and bond.

20. The trial court ought to have afforded the Applicant Nicholas Mwangi Wangeci the protection of the law guaranteed to persons living with mental health conditions.

21. This court has limited jurisdiction to review decisions of lower court and tribunals. In this instance to breathe life to Section 2B of Mental Health Amendment Act Cap 248 by setting aside the orders dated 15th March 2023.

22. The Surety bond pre-15th March 2023 is hereby reinstated and restored.

23. Nicholas Mwangi Wangeci shall forthwith be released to the custody of the sureties' who shall at all times ensure his court attendance as and when required by the trial court

24. The Applicant - Nicholas Mwangi Wangeci shall be escorted to Nakuru County Referral and Teaching Hospital for a mental assessment to determine whether he is fit to stand trial or should continue



treatment and care. The report shall be filed in the trial court within 14 days from the date of this Ruling and this court, shall upon examination of the same, issue an appropriate order in respect of the applicant.

25. The Sureties shall ensure that Nicholas Mwangi Wangeci is medically examined by the Nakuru County Referral and Teaching Hospital after every three months and a report is filed in court.
26. The Trial Court shall periodically every ninety (90) days, mention the case with a view of reviewing the status of the accused person and determining whether he is fit to stand trial.
27. The trial court file shall be referred back to be mentioned in the next fourteen days.

It is so ordered.

SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAKURU ON THIS 12TH DAY OF NOVEMBER 2025

MOHOCHI S.M

JUDGE

