



**Mohamed & another v Republic (Criminal Revision E036 of 2025)
[2025] KEHC 15719 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15719 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
CRIMINAL REVISION E036 OF 2025
J WAKIAGA, J
NOVEMBER 5, 2025**

BETWEEN

KHERI KASSAM MOHAMED 1ST APPLICANT

SAID SALIM MNYUSS 2ND APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a revision from the original ruling in Criminal Case No
E086 of 2023 in the Chief Magistrates Court at JKIA Law Courts)*

RULING

1. The applicant was charged with the offence of trafficking in narcotic drugs contrary to section 4(a)(11) of the narcotic Drugs and Psychotropics substances (Control) Act, the particulars of which were that on the 29th day of August 2023 at Beckville Homes house Number 0402 in Kitengele within Kajiado county, jointly with others not before the court trafficked in Narcotic drugs namely cocaine to weight 3277.43 grams with a market value of kshs 13,109,720 by storing in contravention of the provision of the Act.
2. They pleaded not guilty and on 6th September 2023, the trial court denied them bond on the basis of an affidavit sworn by on CPL George Odhiambo in which it was deposed that the first accused was widely travelled with contacts and was likely to be a flight risk who might be tempted to flee if granted bail.
3. On the second accused it was deposed that the same was a Tanzanian citizen who was in the country of holiday and was at the time of arrest staying in an Airbnb therefore has no fixed a bode. It was further contended that he was found in possession of a Kenyan identity card under different name which raised suspicion that they were part of the drug syndicate and major distributors.



4. By an application dated 14th October 2024 filed at the High Court criminal registry at Kibera as Criminal Revision No E072 of 2024, the applicants moved this court to call for and examine the record of the proceedings before the lower court for the purposes of satisfying itself as to the correctness, legality or propriety of the orders denying them bond. They also sought for an order staying the proceedings of the trial court pending the hearing and determination of the application herein.
5. The application was grounded on the grounds that there were no compelling reasons advanced by the prosecution upon which the court should have denied them bond. It was contended that the court considered extraneous factors including the fact that the applicants were not of the Kenyan nationality, in denying bond.
6. It was contended that the court had earlier admitted the applicants co accused to bond and that the first applicant has a close family friend who was willing to stand surety for him.
7. The application was supported by an annexed affidavit sworn by their Advocate on record Omondi Samuel Ogotu in which he deposed that the first applicant has a close family friend willing to stand surety for him and was willing to use his title deed and that it was therefore of utmost urgency that the court examines the lower court record and review the ruling on bond so that the applicant's freedom of liberty is not curtailed any further.

Submissions

8. On behalf of the applicants it was submitted that this court has jurisdiction under Article 165 of the Constitution and sections 362 and 363 of the CPC to call for and examine the records of the Lower courts. It was contended that section 132 of the Criminal Procedure Code guarantees admission to bond an accused person and that section 123(3) gives this court powers to direct that a person charged before a lower court be admitted to bail/bond.
9. It was submitted that the fact that the applicants are foreigners in itself should not be a ground to deny them bond as was stated in the cases of Republic v Stephen [2023] eKLR and Republic v Jayesh Kumar & 4 others [2024] eKLR.
10. The respondent filed grounds of opposition and written submissions to the effect that in exercising supervisory powers, the High Court will only interfere with powers of the subordinate court when an irregularity or a violation of the law has been committed as was stated in Prosecutor v Stephen Lesinko [2018] eKLR.
11. It was contended that there was no evidence to show that the trial court acted erroneously by refusing to admit the applicants to bond, having found that they did not have a fixed abode being of Tanzanian nationality and in support thereof reference was made to Jackline Ahmidiwe Swai v Republic [2019] eKLR where the court held that being a foreigner does not prevent an accused person to be admitted to bail but other factors like whether he has a fixed abode or property and familial connection in Kenya must be considered.

Determination

12. From the pleadings and submissions herein, the following issues are identified for determination:
 - a) Whether the applicant has made up a case for the exercise of this court's revision jurisdiction
 - b) Whether the trial court acted in error in denying the applicants bond
 - c) What order should the court make herein.



13. The supervisory jurisdiction of the High court is now granted under article 165 (6) of the [Constitution](#) and under sun clause 7 the court may call for the records of any proceedings before any subordinate court and may make any order or give any direction it considers appropriate.
14. The jurisdiction of the court to revise the decisions of the subordinate courts was stated in the case of Republic versus Mark Lloyd Stevenson [2016] KECH 4022 (KLR) thus

In my view, the correct reading of the section is that a party who has a right of appeal cannot “insist” on invoking the High Court’s power of review; in other words, such a party does not have a right to have the court review the decision s/he is aggrieved of. The only sure way to have such grievances heard and considered as a matter of right is through an appeal. The section does not, however, mean that a party which has a right of appeal cannot thereby invoke the Court’s power to review a Magistrate’s court’s order or decision.

For clarification, it is important to state the trite position that the High Court will usually exercise its power to review or even exercise an appeal over an interlocutory matter before a magistrate’s court only in exceptional circumstances. While difficult to determine with mathematical precision when the court will use this power, it is only be sparingly used where, in the words of South African authors, Gardiner and Lansdown (6th Ed. Vol. 1 p. 750), “grave injustice might otherwise result or where justice might not by other means be attained.” As the authors correctly write, the Court will generally “hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below.” Hence, the propriety of exercising revision power for interlocutory matters is decided on the facts of each case and with “due regard to the salutary general rule that appeals are not entertained piecemeal.” (Walhaus & Others v Additional Magistrate, Johannesburg & Another, 1959 (3) SA 113(A) at 120D; S. v Western Areas Ltd & Others 2005 (5) SA 214 (SCA) at 224D.

15. The court in Joseph Nduvi Mbuvi versus Republic [2019] eKLR rendered itself thus: “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.”
16. I take the view that in exercising this jurisdiction, the court is not sitting on appeal and may not substitute its decision to that of the trial court. The court is only called upon to correct irregularities and illegalities which might arise in the course of the trial so as to stop grave injustice being caused to a party by a decision or an order by the subordinate court.
17. In this matter , the trial court denied the applicant bond based on the fact that the same was a foreigner with no fixed place of a bode in Kenya and was likely to abscond trials once granted bond. As I have stated before , there is no proven scientific method for determining the conduct of an accused person once granted bond and therefore the courts shall continue to use their discretion and intuition when it comes to the issue of engaging whether the compelling reasons advance are adequate to enable the court deny an accused person the enjoyment of the right to bail.



18. In this matter I am unable to find any error , irregularity or illegality with the decision of the trial court in denying the applicant bond, having found as a fact that the same is a foreign national with no familial connection to the jurisdiction of the court. The issues raised herein by the applicant are best to be placed before the court for consideration on the basis of a review application.
19. There is no error on the part of the Court to deny the applicant bond once the court finds that there are compelling reasons to so do. This court cannot superintend the trial court on the exercise of its constitutionally granted jurisdiction.
20. The application herein lacks merit and is dismissed.

DATED SIGNED AND DELIVERD THIS 5th DAY OF NOVEMBER 2025

J WAKIAGA

JUDGE

