



**Mohamed v ODPP (Criminal Miscellaneous Application E111 of 2025)
[2025] KEHC 17670 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17670 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL MISCELLANEOUS APPLICATION E111 OF 2025
WM KAGENDO., J
NOVEMBER 27, 2025**

BETWEEN

RASHID MOHAMED APPLICANT

AND

ODPP RESPONDENT

RULING

1. The Notice of Motion dated 4th July 2025 filed by the applicants is brought under Article 165 (6) and (7) of *the Constitution* of Kenya and Section 362 and 364 of the Criminal Procedure Code.
2. The Applicant prays for orders: -
3. Spent
4. This Honourable Court do call and examine the court record in Chief Magistrate Criminal Case no. 971 of 2019 Republic vs Salim Mohamed Rashid for purposes of certifying itself as to the correctness, legality or propriety and as to the regularity of the orders given on 27th May 2025 requiring the 1st and 2nd Applicants to provide evidence of their assertion that the accused person Salim Mohamed Rashid is deceased.
5. Spent
6. Spent
7. The application is propped by the grounds on its face and the affidavit of Rashid Mohamed Rashid sworn on 4th July 2025.
8. The Respondent did not respond to the application. Both parties failed to file written submissions as at the time of making this determination.



9. I have considered the application dated 4th July 2025 together with the affidavit in support of the same and also the subject lower court record herein and note that: -
10. On 6th June 2019, Salim Mohamed Rashid, the accused herein was charged with two counts of, first being a member of a terrorist group contrary to Section 24 of the [Prevention of Terrorism Act](#) and the second charge is being in possession of IED (Improvised explosive device) components in a house contrary to section 12B of the [Prevention of Terrorism Act](#).
11. On 28th August 2019, the accused was granted bail of ksh. 3,000,000/- with two sureties of similar amount and he was to deposit his passport in court which he did. On 14th October 2019, the bail was revised to ksh. 1,500,000/- with two sureties of similar amount.
12. The accused was released on bond and the matter proceeded for trial. However, on 7th December 2020, the accused person failed to come to court. The prosecution applied for summons to the sureties to show cause why they should not forfeit the security deposited in court for failure to bring the accused person to court.
13. On 10th May 2021 and 18th October 2021, the 1st surety, Mohamed Rashid Mohamed (2nd Applicant) herein testified in court and stated that on 4th December 2020 the accused person did not return home from work and they reported the matter to the police vide OB 15/5/12/2020 and called the ATPU and informed them of the same.
14. On 22nd November 2021, both sureties testified in Court and reiterated their narration as stated in court on 10th May 2021 and 18th October 2021. Both oral and written Submissions were made. On 10th February 2021, the Court ruled that the sureties to liaise with the I.O and report to Court on the accused whereabouts. In the event the I.O confirms that it is impossible after all due process and diligent to get the accused person the sureties' security can be forfeited.
15. From the record the surety informed court that they got information that the accused person is held up in DRC Congo. On 10/7/2023 the surety, Rashid Mohamed Rashid informed court that the family got report that he was sentenced to death. On 27th May 2025, the Mombasa Chief Magistrate Hon Ithuku. A.K, noted that there is nothing concrete to show that the accused person is deceased and that the sureties have failed to discharge their duties. He therefore ordered them to pay ksh. 1,500,000/- each failure which they each serve a sentence of 6 months' imprisonment.
16. Section 131 of the Criminal Procedure Code comes into play where there is breach of the terms of a bond with surety. The provision provides the process and procedure for forfeiture of the property ordered as security, it states: -

“ 131.

- (1) Whenever it is proved to the satisfaction of a court by which a recognizance under this Code has been taken, or, when the recognizance is for appearance before a court, to the satisfaction of that court, that the recognizance has been forfeited, the court shall record the grounds of proof, and may call upon any person bound by the recognizance to pay the penalty thereof, or to show cause why it should not be paid.
2. If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover it by issuing a warrant for the



attachment and sale of the movable property belonging to that person, or his estate if he is dead.

3. A warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorize the attachment and sale of the movable property belonging to the person without those limits, when endorsed by a magistrate within the local limits of whose jurisdiction the property is found.
4. If the penalty is not paid and cannot be recovered by attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment for a term not exceeding six months.
5. The court may remit a portion of the penalty mentioned and enforce payment in part only.
6. When a person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of his recognizance, a certified copy of the judgment of the court by which he was convicted may be used as evidence in proceedings under this section against his surety or sureties, and, if the certified copy is so used, the court shall presume that the offence was committed by him unless the contrary is proved.”

17. In *Stephen Githinji Kinyanjui v Republic* [2016] eKLR it was held as follows:-

“In a case where one has offered to stand surety for an accused person it’s the duty of the surety to ensure that the accused person turns up in court every time the court requires him. If the accused does not do it for whatever reason the court has no option but to call upon that surety to forfeit his security ...”

18. In light of the above, it is clear that a bond executed by a surety, secures the attendance of the accused for his trial, and it matures on default upon the failure to ensure the attendance of the accused at the relevant court. The court shall invoke the forfeiture procedure after it has proved that there was a forfeiture, that is the breach of the terms of the bond by non- attendance of the accused in court when required.

19. The Court may call upon any person bound by the recognizance to show cause why it should not be paid. Where sufficient cause is not shown, and the penalty is not paid, the court can recover the amount from the security held under the bond, including issuing a warrant for the attachment of property belonging to the person or his estate. If the penalty is not paid, and cannot be recovered from the asset offered as security, the court may go on to order the imprisonment of the surety for a term not exceeding 6 months.

20. In this case, I find that the Applicants failed to discharge their duties as sureties, they were heard and no sufficient cause was shown as to why the accused failed to attend court as required. The right to bond had been forfeited, and the applicants, as sureties, are required to pay to court the amount of recognizance that is ksh. 1,500,000/- for each surety that they had bound themselves to pay in default.



21. Failure to pay ksh. 1,500,000/- each then motor vehicle registration number KCH545H (for 1st surety) and motor vehicle registration number KCH274H (for 2nd surety) offered as security should be sold to raise ksh. 1,500,000/- for each surety. Imprisonment will only be an option after the disposal of the security has failed.
22. I therefore order: -
1. That the applicants pay to Court the sum of ksh. 1,500,000/- each by 11th December 2025, in default
 2. A warrant of attachment and sale is hereby issued in respect to motor vehicle registration number KCH545H and motor vehicle registration number KCH274H
 3. That the said motor vehicles registration number KCH545H and motor vehicle registration number KCH274H shall be sold by public auction to raise ksh. 1,500,000/- for each surety
 4. That if the penalty is not paid, and cannot be recovered from the asset offered as security then the applicants herein to serve 6 months' imprisonment.
 5. That a date shall be fixed for the matter to be placed before the Deputy Registrar of this court for settlement of terms and condition sale by public auction of the said motor vehicle registration number KCH545H and motor vehicle registration number KCH274H.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 27TH DAY OF NOVEMBER 2025.

WENDY KAGENDO MICHENI JUDGE

Ruling delivered through Microsoft Teams Online Platform.

In The Presence Of;- For Applicant

Responent Mr. Sirima Court Assistant Bebora

