



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CRIMINAL DIVISION-MILIMANI
HIGH COURT CRIMINAL MISC APPL E253 OF 2025
PETER DENNIS BWIREAPPLICANT**

Vs

**OFFICE OF DIRECTOR OF PUBLIC PROSECUTION
(ODPP).....RESPONDENT**

(High Court Misc Appl on revision of Chief Magistrate Court -Milimani MCCR/E045/2022 Republic vs Peter Dennis Bwire- judgment of 29/9/2025)

RULING

APPLICATION

1.By Criminal Miscellaneous Application filed through Certificate of Urgency filed by Applicant's Advocate on record on 13/10/2025; The Applicant raised following grounds;

2. On 17/1/2022 plea-taking commenced; the Accused person/Applicant herein was charged with 3 Counts of Obtaining by false pretenses contrary to Section 313 of Penal Code.

3. The Accused person pleaded NOT GUILTY to all Counts and trial commenced culminating to the Trial Court judgment delivered on 29/9/2025.

4. The Applicant deposed that during trial the Prosecution produced an Agreement purporting to acknowledge that the Applicant received money from Complainants, setting out repayment plan; annexed as Prosecution Exhibit 1 to the Application.

5. The Applicant deposed that as per the Trial Court proceedings upon objection by Defense Counsel; on 10/12/2024, the Trial Court found that Exhibit 1 was not admissible, expressly stating that '*there has to be an original or certified copy of the Agreement tabled for production*' The applicant further buttressed the point that the purported Agreement was handwritten by a person who was not called as a witness by the Prosecution.

6. That notwithstanding this express Ruling, the Trial Court in its Final Judgment at Pg 6 Paragraph (i) stated that; '*This document is admissible under Section 65 &*

67 of the Evidence Act as primary evidence of its contents. The Defense did not challenge the genuineness of the Agreement’.

7. The Applicant submitted that the statement above in the Trial Court’s judgment contradicts its own earlier Ruling which arose precisely because the Defense challenged the admissibility of the said Agreement and the Trial Court earlier excluded the Agreement from evidence on record.

8. The Applicant through Counsel on record raised same issue in filed Written Submissions at Clause 25. Therefore, relying on the Agreement which was earlier declared inadmissible the Trial Court offends the principles of Fair Trial under Article 50 of Constitution and rules of admissibility and reliability of evidence Sections 64-68 of the Evidence Act.

9. Hence, the Applicant sought intervention of the High Court to stay impending Sentencing proceedings as the Applicant risks being sentenced and deprived of liberty based on judgment that is alleged to be tainted by procedural and evidentiary errors.

10. The Applicant sought stay of Trial Court sentencing proceedings and call for the Trial Court record [for perusal] pending the hearing and determination of the

instant Application. The Applicant to remain out on bond on current terms.

11. On 14/10/2025, this Court granted interim /temporary stay of proceedings, the Trial Court File CMCCR/E045/2022 to be availed for perusal. The Application was to be served to Respondent who was to respond and file and serve Response in Court and to Applicant.

GROUND OF OPPOSITION

12. On 2/12/2025, the ODPP filed Grounds of Opposition on the following grounds;

The Applicant failed to demonstrate the incorrectness, illegality or impropriety by the Trial Court to warrant the intervention of this Court.

13. The Respondent posited that the inadmissibility of a single piece of evidence referred to by the Applicant does not nullify the whole judgment, if there is sufficient direct evidence to sustain a conviction.

14. The Respondent submitted that after a conviction follows sentencing proceedings which is a judicial function and a party cannot seek to muzzle the exercise that function but only challenge the outcome.

15. The Applicant was alleged to offend the doctrine of ripeness as it seeks to stay sentencing which is yet to be determined by the Trial Court. The Applicant ought to await completion of trial process which includes sentencing before seeking the intervention of this Court.

ANALYSIS & DETERMINATION

16. The Court is asked to exercise revision jurisdiction on the question of judgment delivered by Trial Court on 29/9/2025 having relied on Agreement which earlier was objected to production as evidence during trial.

REVISION

17. Section 362 of the Criminal Procedure Code bestows upon this Court the power to call for 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, It is therefore clear that the revisionary power is a power reposed on the Court in the exercise of the Court's Constitutional supervisory jurisdiction pursuant to **Article 165(6) of the Constitution**, it can be exercised upon a trigger by the

parties before the trial Court or any other person or by the Court itself on own motion.

18. Section 362 of the Criminal Procedure Code

refers to the High Court's statutory power of revision and provides;

“The High Court may call for 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.”

19. Section 364 of CPC refers to the Powers of High Court on revision, subsection 5 provides for measures to be taken where an appeal lies in an order.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

STAY OF CRIMINAL PROCEEDINGS

20. The law guiding stay of criminal proceedings is well settled. The **Court of Appeal in Joram Mwenda Guantai vs. The Chief Magistrate, Nairobi Civil Appeal No. 228 of 2003 (2007) 2 EA 170**, held that:-

“...the High Court has inherent jurisdiction to grant an order of prohibition to a person charged before a subordinate court and considers himself to be a victim of oppression. If the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the Judge has the power to intervene and the High Court has an inherent power and the duty to secure fair treatment for all persons who are brought before the court or to a subordinate court and to prevent an abuse of the process of the court.”

21. However, the power of the court to stay proceedings is discretionary. In **Goddy Mwakio & Another vs. Republic (2011] eKLR**, the Court of Appeal stated that:-

***“An order for stay of proceedings, particularly stay of criminal proceedings is made sparingly and only in exceptional circumstances.....
.....The order is not given as a matter of course.”***

22. See Ringera J. (as he then was) **Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000** thus;

“....whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on

what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.

23. This Court granted interim /temporary stay of Trial Court proceedings from the Certificate of Urgency Application; so as to interrogate the germane issue(s) of the instant application; peruse the Trial Court record confirm the alleged misdirection and error of law on the face of the record.

PERUSAL OF TRIAL COURT FILE

24. Upon perusal of Trial Court record and the Respondent's opportunity to respond to the Application by filing Grounds of Opposition; the fundamental question is whether the High Court has jurisdiction to exercise revisionary jurisdiction at the stage where trial reached judgment stage and was delivered and while awaiting pre-sentence proceedings the instant application was/is filed taking issue with part of the

evidence adduced by Prosecution to prove their case beyond reasonable doubt.

25. In the instant case, the Trial Court file **CMCR E45 of 2022** trial commenced on 17/1/2022 with Plea-taking proceedings by Hon B. Ochoi SPM. Hearing commenced before Hon Z Abdul PM on 17/3/2023 with evidence by PW1 & PW2. On 31/5/2023 PW3 testified and Accused person's Advocate;

26. Mr Kongoina cross examined the witness. Later PW1 & PW2 were recalled to testify and now cross examined by Counsel on record. On 15/4/2024, the proceedings were taken over by Hon R Ndombi PM under Section 200 CPC with PW4. The Trial Court ruled; Exh 1 was not admissible there had to be an original or certified copy of the Agreement tabled for production.

27. At close of Prosecution case the Accused person was placed on his defense; thereafter judgment was delivered and Accused person found guilty as charged on 3 Counts of/on obtaining by false pretenses.

FINDING

28. The purpose of [revision] [is the High Court] 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

29. The purpose and nature of the revisionary jurisdiction of the High Court was examined by Odunga J (as he then was) in the case of **Joseph Nduvi Mbuvi v Republic [2019] eKLR** not only is the jurisdiction exercisable where the subordinate Court has made a finding, sentence or order but goes onto state that it is also exercisable to determine the regularity of any proceedings of any such subordinate Court as well.

30. This Court finds that the anomaly high lighted by the Defense Applicant is borne out by the evidence/proceedings of the Trial Court. That the Agreement relied on and referred to in the judgment had been declared inadmissible. However, the Trial Court record also confirms other evidence adduced before the Trial Court that was considered and evaluated by the Court taking into account the Defense by the Accused person /Applicant and the totality of all evidence according to the Trial Court found the Accused person culpable of the offences.

31. For this Court to interrogate the evidence on record evaluate consider its probative value against the

charges preferred against the Accused person/Applicant it would have to be on appeal, where all facts evidence on record are availed to the High Court with Memorandum of Appeal listing and outlining Grounds of Appeal this Court should consider.

32.This would aid the Court to evaluate all evidence on record as stated in the case of **Okeno -Vs- Republic 1972 EA 32** on first appeal the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate Court's own decision on the evidence. The first appellate Court must itself weigh conflicting evidence and draw its own conclusions. In doing so, it should make allowance for the fact that the Trial Court has had the advantage of hearing and seeing the witnesses.

33.As it is, the Court cannot invoke revisionary jurisdiction and consider legal issues or errors on the face of the record in the Trial Court judgment piecemeal as proposed when trial is ongoing and not yet completed; but will consider the same on merit upon filing of appeal.

34.At this stage, the Trial process is not completed as Pre sentencing proceedings have not been conducted

and finished. Therefore, this court cannot legally arrogate itself jurisdiction to micromanage every step of the Trial Process in the Trial Court except Interlocutory matters for revision and the substantive trial on appeal. To delve into evidence adduced considered and judgment delivered by the Trial Court before conclusion of trial process would amount to hijacking the Trial Court proceedings midstream. The Supreme Court in the following landmark case; defined Fair Trial process to include;

Murutetu [1] & another v Republic; Katiba Institute & 5 others [2017] KESC 2 (KLR); The Supreme Court held (2);

The trial process did not stop at the conviction of the accused. Sentencing was a crucial component of a trial. It was during sentencing that the court heard submissions that impacted on the sentence to be imposed. That necessarily meant that the principle of fair trial had to be accorded to the sentencing stage too.

DISPOSITION

1. The instant application for revision is premature until trial process is complete and an appeal is filed in the High Court to enable the High Court evaluate ALL evidence on record.

2. The interim stay of proceedings order of 13/11/2025 is set aside vacated and pre - sentence proceedings to continue trial to its logical conclusion.

3. The parties may apply for bail pending in trial or Appeal court if need be.

3. Trial Court file returned to trial Court through Deputy Registrar High Court.

RULING DELIVERED DATED & SIGNED IN OPEN COURT HIGH COURT CRIMINAL DIVISION -NAIROBI on 9/12/2025

VIRTUALLY/PHYSICALLY.

**M.W.MUIGAI
JUDGE**