



**Jubase v Republic (Criminal Revision E130 of 2025)  
[2026] KEHC 134 (KLR) (13 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 134 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION E130 OF 2025  
DR KAVEDZA, J  
JANUARY 13, 2026**

**BETWEEN**

**MOHAMED AHMED JUBASE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before the trial court, the applicant is facing two counts of offences. Count I, conspiracy to defraud contrary to section 317 of the Penal Code and Count II, obtaining money by false pretense contrary to section 313 of the Penal Code. He pleaded not guilty and made an application for bail/bond. Vide a ruling delivered on 27<sup>th</sup> November 2025, the trial court denied the applicant bail.
2. The applicant filed a notice of motion dated 28<sup>th</sup> November 2025, seeking a revision of the decision trial court denying the applicant bail/bond. He urged the court to grant him reasonable bail/bond. The application is supported by an affidavit sworn on even date.
3. The Applicant avers that the charge under section 317 of the Penal Code is a misdemeanour attracting a maximum sentence of three years. It is contended that his company agreed to import a concrete mixer from China for the complainant at an agreed consideration of Kshs. 4,480,000. The Applicant resides and works in China under a valid residence permit, and was arrested on 7<sup>th</sup> November 2025 upon arrival at Jomo Kenyatta International Airport.
4. He was arraigned before the Kibera Law Courts where bond was initially declined on the ground that he was a flight risk, a position reiterated by the trial court on 27<sup>th</sup> November 2025. It is noted that his co-director, charged in a related matter, was admitted to cash bail of Kshs. 150,000, and that the prosecution intends to consolidate the cases.



5. The Applicant maintains that the allegation of flight risk is unsupported, his passport is held by the prosecution, and he has strong family ties in Kenya. He asserts that bail is a constitutional right and undertakes to comply with any terms imposed by the Court.
6. The respondent did file a response to the application. The application was canvassed by way of oral submissions which have been duly considered by the court. The issue for consideration is whether this court should revise the orders of the trial court denying the applicant bail.
7. The revisional jurisdiction of this court is donated by Section 362 of the Criminal Procedure Code which provides that:

“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.”

8. From the above provision, it is clear that the court can only revise orders or decisions of the lower court if it is satisfied that the decision, order, or finding is tainted with illegality, errors of law, or impropriety or that there was an irregularity in the proceedings that gave rise to the impugned order, finding or decision.
9. The record shows that the Applicant took plea on 10<sup>th</sup> November 2025 and denied the charges. An application for bail pending trial was heard, but in a ruling delivered on 27<sup>th</sup> November 2025, the trial court declined to grant bail on the ground that the issue had allegedly been determined earlier by another court of concurrent jurisdiction, and that it could not sit on appeal over that decision.
10. From the proceedings, the prosecution contended that a co-accused, Ahmed Mohamed Alow, had taken plea on 16<sup>th</sup> December 2024, and that the Applicant had fled the jurisdiction prior to taking plea, prompting the issuance of a warrant of arrest. However, the original file, MCCR E2436 of 2024, discloses that the only accused person therein was Ahmed Mohamed Alow. The question of bail was considered solely in respect of that accused, who was admitted to bond of Kshs. 100,000 with one Kenyan surety or a cash bail of Kshs. 150,000 with two contact persons. At that time, the Applicant had not taken plea and his entitlement to bail was neither considered nor determined.
11. In the circumstances, the finding by the trial court on 27<sup>th</sup> November 2025 that the issue of bail had already been determined by another court was erroneous. The court was under a duty to independently consider and determine the Applicant’s request for bail.
12. In any event, bail is a constitutional right under Article 49(1)(h) of the *Constitution*, which requires that bail terms be reasonable. Save for the limitations set out under section 123A of the Criminal Procedure Code, the burden rests on the State to demonstrate compelling reasons for denial of bail. In the Bail and Bond Policy Guidelines, it is restated as a general guideline in Paragraph 4.9 that:

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the *Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”



13. Moreover, by dint of Article 50(2) of the *Constitution*, every accused person is entitled to the presumption of innocence. Hence, in the Bail and Bond Policy Guidelines, it is recommended that:

The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.

14. The prosecution opposed the grant of bail on the ground that the Applicant was a flight risk, contending that he left the jurisdiction despite knowledge of a complaint lodged against him. In response, the Applicant explained that he works in China under a valid work permit and denied any intention to abscond. He expressed willingness to surrender his travel documents and undertook to attend court whenever required.

15. The record further shows that the matters involving the Applicant and his co-accused, being MCCR E2436 of 2024 and MCCR 2484 of 2024, have since been consolidated. The Applicant is a Kenyan citizen with a fixed abode and familial ties within the jurisdiction. He maintains that his passport is already in the custody of the investigating officer and has reiterated his readiness to comply with any conditions imposed by the Court. Taken cumulatively, these factors substantially mitigate any perceived risk of absconding.

16. In the premises, I am not satisfied that any compelling reason has been established to justify the denial of bail or bond. The legal burden lay with the prosecution to demonstrate the existence of exceptional or compelling circumstances warranting such denial, which burden was not discharged. Any residual concerns as to attendance can adequately be addressed through appropriate and reasonable bond terms and sureties, thereby securing the Applicant's presence while upholding the constitutional presumption in favour of liberty.

17. From the foregoing, the application for revision dated 28<sup>th</sup> November 2025 is allowed in the following terms:

- i. The Applicant, Mohamed Ahmed Jubase, is hereby admitted to bond in the sum of Kenya Shillings Two Million (Kshs. 2,000,000) with one Kenyan surety of a similar amount, to be approved by the trial Court after verification and confirmation by the Investigating Officer who shall write a letter to court confirming the authenticity of the documents and the surety.
- ii. The Applicant shall deposit his passport and all travel documents with the Investigating Officer to be retained for the duration of the trial.
- iii. A stop order and red alert is hereby issued barring the Applicant from travelling outside the jurisdiction of the Court pending the conclusion of the trial.
- iv. These orders shall be served upon the Immigration Department, by the Deputy Registrar who are directed not to issue the Applicant with a new or replacement passport during the pendency of the trial.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF JANUARY 2026**

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**D. KAVEDZA**



## **JUDGE**

In the presence of:

Dr. Said Chitembwe for the Applicant

Mr. Mutuma for the Respondent

Maureen Court Assistant.

