



Gaya alias Hezron Nyabola Nyagela v Republic (Criminal Revision E136 of 2025) [2026] KEHC 552 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEHC 552 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E136 OF 2025
DR KAVEDZA, J
JANUARY 29, 2026**

BETWEEN

**DANIEL ODHIAMBO GAYA ALIAS HEZRON NYABOLA
NYAGELA APPLICANT**

AND

REPUBLIC RESPONDENT

RULING

1. Before the subordinate court, the Applicant faces several charges in Kibera Chief Magistrate’s Court Criminal Case No. E1300 of 2025. He pleaded not guilty and was admitted to bond in the sum of Kshs. 300,000 with one surety of a similar amount. In the alternative, he was admitted to cash bail of Kshs. 100,000 with two contact persons. The trial court further directed that the Applicant deposit his passport in court pending the hearing and determination of the case.
2. By an application dated 14th January 2026, the Applicant moved this Court seeking revision of the orders of the trial court. He prays that, pending the hearing and determination of the application, this Court be pleased to stay the proceedings and the order issued on 24th December 2025 requiring him to surrender his passport. He further seeks that the trial court record be called for, and that the orders of 24 December 2025 and the directions issued on 14th January 2026 be reviewed and set aside.
3. The Applicant contends that on 31st December 2025, the High Court admitted him to cash bail without imposing any additional conditions. He avers that when he appeared before the trial court on 14th January 2026 for pre-trial proceedings, the Trial Magistrate nevertheless insisted on the surrender of his passport, despite being informed of the High Court order varying the terms of bail.
4. According to the Applicant, the insistence by the magistrate’s court had the effect of undermining or varying the order of the High Court. He depones that he is a businessman with interests within



- and outside Kenya and is therefore a frequent traveller. He asserts that the requirement to deposit his passport will unduly constrain his business activities and occasion him hardship.
5. The Applicant further argues that the impugned order unjustifiably interferes with his occupational engagements and infringes his constitutional rights, including the rights to liberty, dignity, property and freedom of movement. He maintains that no prejudice will be occasioned to the Respondents if the orders sought are granted, and that this Court has the requisite powers to intervene.
 6. In response, CPL. Noah Kiplagat swore a replying affidavit dated 14th January 2026. He deponed that he is the Investigating Officer attached to the Mining Investigations Unit of the Directorate of Criminal Investigations. He asserted that the Applicant is a serial offender in matters relating to gold scams, citing Milimani Criminal Case Nos. 800 of 2019 and 976 of 2019.
 7. The deponent averred that although the Applicant claims to be a frequent traveller for business purposes, no evidence has been produced to demonstrate the nature or legitimacy of such business. He stated that investigations indicate that the Applicant's travels are linked to fraudulent gold scam activities. He further deponed that the Applicant has been under investigations since September 2025, following his arrest and release on cash bail of Kshs. 100,000 for the offences of conspiracy to commit a felony and obtaining money by false pretences, during which process his identity became a subject of investigation.
 8. It was further deponed that the investigation relating to the Applicant's identity is properly before the court in Kibera Criminal Case No. E1300 of 2025, which is distinct from the matter in which he was admitted to cash bail. The deponent maintained that the Applicant was lawfully ordered to deposit his passport, that he has failed to comply, and that the passport forms part of the subject matter of the charges and is intended to be produced as an exhibit. He urged the Court to dismiss the application.
 9. In rebuttal, the Applicant filed a supplementary affidavit dated 18th January 2026. He contended that the nature of his business is not in issue in these proceedings and is therefore not for determination by the Court. He further asserted that investigations have been ongoing for over five months, during which he has been required to report weekly to the investigating officers, a process he contends violates his right to fair administrative action. He also alleged that the Respondent intends to subject him to piecemeal prosecutions in different forums, which amounts to an abuse of the court process.
 10. I have considered the application, the arguments in support, the applicable law and entire record of the subordinate court.
 11. The power of this court in its revisionary jurisdiction is founded under Section 362 of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides that:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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.
 12. Consequently, this court has jurisdiction to entertain the application before me. In the instant application, the applicant sought the revision of orders made by the trial court.
 13. From the record, upon plea, the trial court admitted the Applicant to bond in the sum of Kshs. 300,000 with one surety. The applicant moved to this court sought and was granted the alternative of a cash bail of Kshs. 100,000. No further orders were made by this court. On 14th January 2026, the trial court made a further order that the applicant's passport be deposited in court pending the hearing and determination of the case. That condition formed part of the original bail terms set by the trial court.



14. The record further shows that the Applicant did not, at the time the orders were made, raise any objection to the requirement to deposit his passport, nor did he apply before the trial court for a review or variation of that condition.
15. Furthermore, when the Applicant moved this Court by way of a revision application, the only issue placed before the Court for determination was whether cash bail should be allowed as an alternative to bond. In its decision delivered on 31st December 2025, this Court granted cash bail in the sum of Kshs. 100,000. The issue of the passport was neither raised nor argued and therefore did not fall for determination. It follows that this Court did not vary, set aside or in any manner interfere with the condition relating to the deposit of the Applicant's passport.
16. The Applicant's assertion that the trial court's subsequent insistence on compliance with that condition amounted to a variation of the High Court order is therefore unfounded. The trial court merely enforced a condition that remained valid and had not been disturbed.
17. The revisionary jurisdiction of this Court under section 362 of the Criminal Procedure Code is limited to correcting illegality, incorrectness or material irregularity in the proceedings or orders of a subordinate court. Under section 364 of the Code, that jurisdiction is not to be invoked where the impugned decision falls within the lawful exercise of discretion and no miscarriage of justice is demonstrated.
18. The setting of bail and bond terms, including attendant conditions, lies within the discretion of the trial court, to be exercised judiciously. The requirement for the deposit of a passport as a pre-condition to release is a recognised bail condition, particularly where the court considers it necessary to secure the attendance of an accused person.
19. In the present case, no illegality, incorrectness or material irregularity has been demonstrated in the manner in which the trial court exercised its discretion. The Applicant has also failed to exhaust the available avenue of seeking review or variation of the bail terms before the trial court.
20. I therefore find that the application before this Court is premature and devoid of merit. The proper forum for the Applicant to ventilate his grievance, in the first instance, is the trial court.
21. In the result, the application dated 14th January 2026 is dismissed.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 29TH DAY OF JANUARY 2026

D. KAVEDZA

JUDGE

In the presence of:

Mr. Juma for the Applicant

Mr. Mutuma for the Respondent

Karimi Court Assistant.

