

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKADARA
CRIMINAL DIVISION

CRIMINAL REVISION NO E173 OF 2025

JOSEPH MOKUA MOGENI

APPELLANT

VERSUS

REPUBLIC

RESPONDENT

(Being a revision from the original ruling in Criminal case no E 109 of 2025 of the Chief Magistrates Court at JKIA)

RULING

1. The applicant was charged at the JKIA Law Courts with the offence of trafficking in narcotic drugs contrary to section 4(a) ii) of the Narcotic drugs and Psychotropic Substances Act the particulars of which were that on the 9th June 2025 at Match along Nakuru -Nairobi Highway jointly with others not before the court trafficked in narcotic drugs namely cannabis to wit 168.30 kgs with a market value of Kenya shillings 5,049,000 by conveying in contravention of the Act.
2. By a ruling thereon the subject matter of this application dated 2nd July 2025 the trial Court denied the applicant bond and in doing so had this top say “
10. The only compelling reason in the eye of the court that warrants detailed consideration by this court regarding joseph and that he has an antecedent. This

the fact that he is charged before Nakuru Law Courts in E190 of 2022 with trafficking a much larger quantity and value of cannabis -245, 000 grams valued sat kshs 7.350,000. It does not matter that the case has not been concluded. It is an antecedent and therefore a fact for consideration by this court."

3. By an application thereon dated 16th July 2025 under certificate of urgency the applicant moved the court for order that the order by the trial court made on 2nd July 2025 on bond bail be and is hereby called to this honourable court for revision and to substitute the same with an order granting bail/bond on reasonable terms.
4. The said notice of motion was supported by his annexed affidavit in which it was deposed that he was arraigned in court on 25th June 2025 for custodial orders for five days before charging and that on the said date the trial court questioned him off record about his name and national identity card which information was not recorded in the court file.
5. That his Advocate on record did not oppose the application during which period of time he was held at Muthaiga Police Station despite the fact that he was not feeling well and needed medical attention which he brought to the attention of the police who took no action. He was later rushed to port health , within the airport where he was stabilized before being referred

to Kenyatta National Hospital and later brought back to court for plea.

6. It was contended that the import of another case against him was a prima facie evidence that he had always attended court as and when required and that the trial court denied him bail specifically because of his character and antecedent in total exclusion of any adverse factors and that the court proceeded to fix the matter down for hearing without the prosecution compliance with the order for the supply of the witness statements and documents and therefore his matter should be transferred to another court .
7. It was deposed that since the 18th June 2025 when he was referred to Kenyatta Hospital for specialized treatment , he had never been taken to the said hospital despite the fact that it was in general knowledge that he was unwell and yet to recover from his accident and that his medical issues were getting more complicated and yet not treated with the seriousness that it deserved .
8. It was contended further that he had a family that was totally dependent on him and that his incarceration during the proceedings of the case had had put them to economic risk which will affect them on their day to day lives in terms of daily subsistent.
9. In response to the said application the prosecution filed grounds of opposition and written submissions in which it was contended that the applicant was given fair

hearing and that the right to bail was not absolute and that the court could only interfere with the subordinate courts decision when it is irregular or a violation of the law has occurred as was stated in **Prosecutor versus Stephen Lesinko [23018] eKLR** and that one of the considerations by the court would be to balance the right of the accused, pursuant to the presumption of innocence and to be released on bond pending his trial against the public interest of prevention of crime as was stated in the case of **republic versus Patrick Ntarangwi [2020] KEHC 2140 (KLR)** .

10. It was submitted that there was no new evidence placed before this court that shows that the trial court acted in error by refusing to admit the applicant to bond , the court having held that the applicant would not be released on bond due to his antecedent based on the fact that he had another case in nakuru law courts being E190 of 2022 fir a similar offence , which was a compelling reason which court ought to consider under the Judiciary bond and bail policy guidelines and under section 123A of the Criminal Procedure Code.

11. It was contended that the application was unmerited and an abuse of the court process as bail was not an absolute right.

12. On behalf of the accused Mr Seneti submitted that the applicant was granted bail by the Nakuru court and that the court was wrong in considering it in denying the applicant bond as those charges could well have

been trump up charges. It was submitted further that the court did not consider the pre-bail report before declining to release the applicant on bail since the same had a positive recommendation on the applicant.

13. In declining to grant bail , the trial court had this to say: “ **10. There is only one compelling reason in the eyes of the court that warrants detailed consideration by this court regarding Joseph, and that is that he has an antecedent. This the fact that he was charged before Nakuru law courts in E190 of 2022 with trafficking a much larger quantity and value of cannabis -245,000 grams valued at kshs 7,350,000. It does not matter that the case has not been concluded. It is an antecedent and therefore a fact for consideration by this court**

11. It forms the basis of compelling reason to deny Joseph any term of release

12. I am alive to the fact that under Article 50(2) (a) of the Constitution , Joseph is innocent in the case before this court and in Nakuru Law Courts until he is proven guilty. But it cannot be that an accused person out on bond or basil can commit as many similar offences as those in the charge that had him arraigned and the court stands wringing its hand and shrugging shoulders because of the right of an accused person under Article 50. The court has a duty to ensure that

the criminal justice system function in the most balanced way both for the accused and for those seeking Justice “

DETERMINATION

14. The court’s jurisdiction on revision is limited to correcting errors and or mistakes made by the trial court in the course of trial. It is not an appeal where the court has the wider latitude of reviewing the proceedings before the lower court so as to come to its own decision thereon. In exercising that jurisdiction, the court is guided by the principles set out in the statute and judicial pronouncements.

15. This court in the case of **George Alwada Omwera V Republic [2016] KEHC 7437 (KLR)** had this to say: “

17. Section 123(3) gives the High Court the power to direct that a person charged before a lower court be admitted to bail or that bail required by a sub-ordinate court or police officer be reduced. The question to be answered in this application is whether the High Court has powers to cancel bail granted by the lower court?

Article 165(6) of the Constitution of Kenya 2010 provides that the High Court has supervisory jurisdiction over the subordinate courts and over any person or body or authority exercising judicial or quasi judicial functions and in sub-article (7) for the purpose of exercising the supervisory jurisdiction the High Court may call for the record of proceedings before any subordinate court or person, body or authority referred herein and may make any order or give **any directions it considers appropriate to ensure the fair administration of justice** (*Emphasis added*)

A reading of this Article of the Constitution clearly shows that the High Court now has supervisory jurisdiction both in respect of civil and criminal matters arising from the subordinate courts in addition

to the supervising quasi judicial bodies to ensure the fair administration of justice.

In respect to criminal matters Section 362 and 364 (1) (b) of the Criminal Procedure Code provides as follows: -

S. 362 the High court may call for and examined the records 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.

S. 364(1) in the case of a proceeding in subordinate court the record of which has been called for or which has been reported for order or which otherwise comes to its knowledge, the High Court may

(b) in the case of any other order other than an order of acquittal alter or reverse the order.

It therefore follows that this court has both Constitutional and statutory jurisdiction to determine this matter herein by calling for the records of the trial court to satisfy itself as to either the correctness, legality or propriety of the finding of the trial court however the jurisdiction of the court herein must be exercised with the legal splenetic of revisionary jurisdiction is upon which the application is brought which jurisdiction include cancelling or reversing the bonds terms granted in appropriate cases.

In exercising supervisory jurisdiction under Article 165(6) the court does not exercise appellate jurisdiction and therefore cannot review or reweigh evidence upon which the determination of the lower court is based, it can only demolish the order which it considers erroneous or without jurisdiction and which constitutes gross violation of the fair administration of justice but does not substitute its own view to those of the inferior tribunals.

In **VEERAPPA PILLAI v REMAAN LTD** the Supreme court of India has this to say:-

“The supervisory powers is obviously intended to enable the High court use them in grave cases where the subordinate tribunal or bodies or officer acts wholly without jurisdiction or excess of it or in violation of the principles of natural justice or refuses to exercise jurisdiction vested in them or there is an apparent error on the face the record and such action, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide and large as to enable the High Court to convert itself into a Court of Appeal and examine for itself the

correctness of the decision impugned and decide what the proper view on the order be made.....”

The above principle is applicable to the exercise of revisional jurisdiction of the court wherein the court too cannot sit in appeal and re-appreciate the evidence. It is only exercised to correct the manifest error in the order of the subordinate courts but should not be exercised in a manner that turns the Revisional court into appeal. The jurisdiction cannot be exercised mainly because the lower court has taken a wrong view of the law or misapprehended the evidence tendered. See **PATHUMMAA & Anor v. MUHAMMED 1986 (2) SCC 585** where it was stated that in revisional jurisdiction the High Court would not be justified in substituting its own view for that of the magistrate on question of facts.”

16. I still stand by the above decision save to say that the revision powers are very limited and specific in nature with the sole purpose of correcting errors made by the trial courts during the course of the trial and is not akin to appeal where the court has a wider latitude including substituting its decision to that of the trial court.

17. Against that background this court is called upon to decide whether the lower court acted in error by declining to release the applicant on bond based on the fact that he had another case of a similar nature in a court of competent jurisdiction ? having examined the record of the proceeding before the trial court , my answer is in the negative. The character of the applicant and the antecedent forms part of compelling reasons which a court can consider while granting bond and the court cannot therefore be faulted.

18. On the issue of the applicant’s medical condition , it is clear that the same was not placed before the trial court for consideration and therefore the court cannot

be faulted on that ground. The applicant still has the right to approach the trial court for review of the order issued herein on the ground of changed circumstances.

19. The powers of this court on revision as stated above are limited to calling the record of the inferior criminal courts and to examine the correctness , legality or propriety of any findings sentence or order recorded or passed and as to the regularity of any proceedings of such court and to pass appropriate order. It conserves the powers of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence.

20. This therefore leaves the court with one function, to determine whether the court acted in error in declining to grant the applicant bond? the court as stated herein looked at the antecedent of the applicant herein being the fact that while out on bond granted by the court at Nakuru in criminal case no E190 of 2022, the same is before the trial court having been charged with a similar offence and therefore portraying the accused as a person who in the eye of the said court, though still considered innocent under Article 50(2)(a) of the Constitution out to be denied bond so as to ensure that the criminal justice system functions in the most balanced way, as the court does not know how many other cases shall come its way from the quiver of the accused if the same is released on bond .

21. I therefore find no error illegality and or inappropriate on the said ruling and since this court cannot on revision re-apprise the evidence before the trial court and not exercise the jurisdiction because the trial court has taken a wrong view of the facts before it , I find no merit on the application herein which I hereby dismiss.

22. And it is ordered

**DATED SIGNED AND DELIVERED THIS 17th DAY OF
DECEMBER 2025**

**J. WAKIAGA
JUDGE**

In the presence of
Court Assistant - Irene
Ms. Kariuki for the State
Mr. Seneti for the applicant