

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI
MISC CR. APPLICATION NO. E093 OF 2025

EDWIN OGONDA

NYAGAKA.....APPLICANT

VERSUS

DPP.....

.....RESPONDENT

RULING

Vide application dated 23rd October 2025 the Applicant seeks that the Court be pleased to issue an Order staying and /or set aside the Ruling and/ or Orders delivered in the Lower Court at Migori CR. No. E248 of 2025 and in the alternative direct that the bond approval process be re-done by any other Magistrate apart from her.

THAT- the Hon. Court be pleased to call and examine the record and Ruling and Orders of Hon. A. C. Munyonyi in Migori Criminal Case No. E248 of 2025 in the matter of State vs Brian Ogonda Nyagaka for the purposes of satisfying itself as to the correctness, legality and propriety of the Orders of the Court issued on 15th July, 2025.

It was also sought that a declaration be made that the Magistrate's direction or Order issued on the 15^{di} July, 2025 would be and/ or is an abuse of the Court's process, Justice, oppressive and vexatious and this Honourable Court has powers to intervene and therefore declare the same a nullity. The cost of this Application was also sought for.

The application is Supported by the grounds on its face and annexed affidavit of Albert Mudeyi Okumu, the Applicants' Advocate herein. The said grounds are as set down below as follows:

- a. THAT, the decision by the Hon. Magistrate declining bond approval was arbitrary, unfair, unjustified and without any proper legal basis and ought to be reviewed and/ or set aside
- b. THAT, the, Applicant herein is an accused person and was granted bail on the 27/6/2025 yet he is still in custody.
- c. That, the applicant is a family man and the sole bread of his young family that stays in a rental house in Nakuru town where he works as a mechanic to provide for them.
- d. THAT, the Applicant herein found a surety who is related to him and knows him better than any other person and he, being his uncle is still willing to stand surety for him pending the hearing and defemination of this case.
- e. THAT, the Applicant herein affirms that he shall abide by all the conditions of bail that Mill be set by the Court.
- f. TH.AT, the Applicant was charged before this Court and he shall remain innocent until proven guilty hence the trial Court had no right to reject the proposed surety.
- g. THAT, bail is a fundamental light for the accused person as enshrined in the Constitution and should not be denied when a willing surety has voluntarily offered to do so without any coercion.
- h. THAT the continued detention of the applicant when a relative has voluntarily offered to stand surety for him amounts to infringement of his Constitutional right to bail and fair trial.

- i. THAT, the Applicant stands to suffer a lot of damage and mental anguish if Orders sought herein are not granted as prayed.
- j. THAT, It would be fair and just if Order sought herein are granted as prayed.
- k. THAT, it is the interest of justice that the prayers sought herein be granted.

Although the Applicant has indicated that his advocate has sworn a supporting affidavit, the affidavit on record is that of TOM JUMA CHWEYA sworn on 23rd October 2025. The said affidavits reiterates the grounds on the face of the application.

The application was opposed by the Respondents grounds of opposition dated 9th November 2025 in which it is said that the application lacks merit and does not meet the legal threshold of the orders sought as it has not addressed the issue of suitability of the proposed surety. Which was the crux of the matter

This application was canvassed by way of written submissions the Applicants submissions are dated 25th November 2025 and the Respondents submissions are dated 9th November 2025.

This court has considered the application, the grounds, the supporting affidavit, the grounds of opposition and rival submissions and find that the orders made by the trial magistrate were an exercise of discretion after she examined the proposed surety and found that they were not suitable as he was not honest about basic details and he did not have the contacts of the parents of the

accused in his phone and as such in consideration of the seriousness of the offence the trial magistrate found that the details provided were misleading and not genuine. The trial magistrate indicated that the contact between the accused and the proposed surety is poor and for that reason she declined to proceed with bond approval and advised the accused to look for another suitable surety.

This court therefore finds that it has not been proved satisfactorily that the order by the trial magistrate is incorrect, illegal or lacks propriety to warrant the same to be revised. In the circumstances the application lacks merit and same is dismissed.

DELIVERED, DATED and SIGNED at MIGORI this 5th day of February, 2026.

**A. ONGINJO
JUDGE**