

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL REVISION NO. E119 OF 2025

**IN THE MATTER OF PROTECTION OF RIGHT OF AN
ARRESTED PERSON UNDER ARTICLE 49 & RIGHT TO A FAIR
HEARING UNDER ARTICLE 50 OF THE CONSTITUTION OF
KENYA (2010)**

AND

**IN THE MATTER OF THE CANCELLATION OF BOND AND BAIL
TERMS IN CRIMINAL CASE NO. E458 OF 2025 REPUBLIC V
PETER MBURU AT THE SENIOR PRINCIPAL MAGISTRATE'S
COURT AT NYAHURURU (NYAHURURU LAWS (COURT 4)**

AND

IN THE MATTER OF AN APPLICATION

BETWEEN

**PAUL MBURU RODUROT.....1ST
APPLICANT**

ISAAC RODROT.....2ND APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was arraigned following allegations of having committed the offence of **Stealing a motorcycle**. Upon denying the charge, he was granted bond of Kshs.150,000/- or a cash bail of Kshs.50,000/- on 9th June, 2025. The 1st Applicant was not able to raise the cash or secure a surety hence the terms of bail/bond were reviewed to cash bail of Kshs.40,000/- or bond of Kshs.100,000/- with a surety on 12th July, 2025.
2. The 1st Applicant deposited the cash bail and after two (2) witnesses testified on 21st July, 2025, the Applicant did not turn up for trial on the next hearing date, 29th September, 2025. The case was mentioned on 13th October, 2025 when a warrant of arrest was issued and the cash bail forfeited.
3. On the 17th November, 2025, the 1st Applicant appeared in court. Also present was No. 60485 Sergeant Joseph Yator of DCI Marmanet who introduced himself as a brother to the person who deposited the cash bail. He alleged that the 1st Applicant disappeared from his home in Subukia and that he had mental illness. Mr. Eboso learned prosecution counsel submitted that the Applicant could be subjected to mental assessment.
4. In its Ruling the court stated thus;

“I have considered the prayers to lift the warrant of arrest and reinstate cash bail. I have seen the medical documents presented in court. They depict history of mental illness. This fact was

however not brought up by the family during plea. The matter has proceeded and the accused was able to ask the witness questions in cross examination.

He absconded court on 29th September, 2025. Cash bail was sought to be forfeited on 13th October, 2025. It was actually forfeited on 22nd October, 2025. During this time the accused did not present himself to court and neither did the person who had paid his cash bail or the person in court today. They had full knowledge that the accused had ran away from home and he had the case pending but failed to follow up with his court dates as a priority. The cash bail remains forfeited.

Given the information presented to court today and the risk clearly of the accused person failing to come to court again, fresh bond terms cannot issue at this point. We need to be certain of his mental status and from its result, the prosecution will then make the necessary application.

As such the warrant of arrest are lifted. The cash bail remains forfeited. Let the accused be remanded and presented to hospital for a mental

assessment report. Mention on 1st December, 2025.”

5. In the result, a mental assessment was carried out whereby the Applicant was found to be of sound mind and a further hearing date was fixed.
6. Through a Notice of Motion dated 23rd December, 2025 the Applicants seeks orders thus;

1) Spent.

2) That this honourable court be pleased to release the Applicant herein in the interim pending hearing and determination of this application on an affordable and lenient bond terms preferable a cash bail of Kshs.10,000/-.

3) That this honourable court be pleased to call for and examine the record of proceedings in Cr. Case No. E458 of 2025 before the SRM's Court at Nyahururu (Nyahururu Law Courts (Court 4) for the purpose of satisfying itself as to the correctness, legality or propriety of the Ruling and subsequent orders issued on 17th November, 2025.

4) That this honourable court be pleased to vacate and/or set aside the orders issued by Hon. Mary Njuguna on 13th October, 2025 cancelling cash bail of Kshs.40,000/- deposited

by 2nd Applicant on behalf of the 1st Applicant herein.

5) That this honourable court be pleased to reinstate the cash bail of Kshs.40,000/- forfeited by the subordinate court on behalf of the Applicant herein on 13th October, 2025 by 2nd Applicant herein Isaac Rodrot.

6) That this honourable court be pleased to transfer the hearing of Cr. Case No. E458 of 2025 before the SRM's Court at Nyahururu (Nyahururu Law Courts (Court 4) to another learned Magistrate other than Hon. Mary Njuguna for interest of justice and fairness.

7) That this honourable court be pleased to give further orders and/or directions as it may deem fit and just to grant.

8) That the costs of this application be in the cause.

7. The application is premised on grounds that;

1. That the 1st Applicant herein is incarcerated at Nyahururu Remand Prison and is suffering from serious health issues including mental illness after his cash bail was cancelled by the trial court in unfair, unjust and unreasonable manner.

2. The aforementioned cancellation of the Applicant's cash bail terms granted by the Magistrate on erroneous determination without due regard to surrounding circumstances of his non-attendance of the court and his health condition which is an improper and incorrect verdict.

3. The mental illness of the Applicant is deteriorating thereby requiring a compelling need of intervention of this honourable court being taken as a matter of priority to prevent irreparable loss and damage to the Applicant and the educational needs of his family.

4. It would be just and expedient in the application is heard as a matter of priority to protect the Applicant's constitutional rights and for the best interest of his health and his family's welfare especially his children.

8. The application is further supported by an affidavit deposed by the 2nd Applicant who reiterates what prevailed when the 1st Applicant was arraigned. He also states that the learned trial Magistrate failed to consider the two (2) medical reports for Mathari National Teaching and Referral Hospital and that of Nyahururu County Hospital on the 1st Applicant's mental illness status.

- 9.** That the 1st Applicant is incarcerated at Nyahururu Remand Prison and is suffering from serious health issues including mental illness after his cash bail was cancelled in unfair, unjust and unreasonable manner. That the cancellation of bail was done on erroneous determination without due regard to surrounding circumstances of the 1st Applicant's non-attendance of the court and his health condition which is an improper and incorrect verdict.
- 10.** That the learned Magistrate has failed to act, conduct proceedings professionally with all required efficiency, fairness and with reasonable promptness hence its right and just to release the 1st Applicant on lenient and affordable cash bail of Kshs.10,000/-.
- 11.** That the learned Magistrate failed to appreciate that when the 2nd mental assessment was being done the 1st Applicant had already been treated and taken some medicines from Mathari Hospital which had a cooling and/or pacifying effect on his condition.
- 12.** The application is unopposed save that the Respondent filed submissions.
- 13.** The Applicants solely relied on the application.
- 14.** The Respondent submits that the application is an appeal disguised as a revision.
- 15.** That the court's revisionary jurisdiction is conferred by **Section 362 of the Criminal Procedure Code** which cannot be used to re-evaluate evidence or substitute the trial

court's discretion. That intervention can only be warranted where there is manifest illegality material irregularity or want of jurisdiction.

16. That the impugned orders were within the lawful discretion of the trial court and were exercised judiciously. Therefore, no irregularity, or violation of the right to fair hearing has been demonstrated and no error apparent on the face of record has been demonstrated as well.

17. I have considered the application, supporting affidavit and annexures thereto as well as submissions filed by the state.

18. The application is brought pursuant to **Articles 27, 49, 50 and 159 of the Constitution** together with **Section 131, 132, 362 and 364 of the Criminal Procedure Code.**

19. Revisionary jurisdiction is conferred upon the High Court by the Constitution as well as statute **Article 165(6) (7) of the Constitution** provides thus;

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers

appropriate to ensure the fair administration of justice.

20. Section 362 of the Criminal Procedure Code 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.

21. The duty of this court is limited to interrogating proceedings and to rectify errors and omissions. The arguments for revision should prove that orders were made with illegality, they were incorrect or were made in breach of the procedure. This means that revisional jurisdiction should be used sparingly and only in cases where there is jurisdictional error or gross illegality.

22. At the outset, the learned trial Magistrate appreciated the constitutional right of the 1st Applicant (Accused) to bail and acted *suo moto* by granting him bail and/or bond. He was released having deposited cash bail subject to the guarantee that he would turn up for trial when and as required. However, he failed comply with the bail terms.

23. Section 131 of Criminal Procedure Code provides that;

(1)Whenever it is proved to the satisfaction of a court by which a recognizance under this Code has been taken, or, when the recognizance is for appearance before a court, to the satisfaction of that court, that the recognizance has been forfeited, the court shall record the grounds of proof, and may call upon any person bound by the recognizance to pay the penalty thereof, or to show cause why it should not be paid.

(2)If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover it by issuing a warrant for the attachment and sale of the property belonging to that person, or his estate if he is dead.

(3)A warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorize the attachment and sale of the movable property belonging to the person without those limits, when endorsed by a magistrate within the local limits of whose jurisdiction the property is found.

(4)If the penalty is not paid and cannot be recovered by attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment for a term not exceeding six months.

(5)The court may remit a portion of the penalty mentioned and enforce payment in part only.

(6)When a person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of his recognizance, a certified copy of the judgment of the court by which he was convicted may be used as evidence in proceedings under this section against his surety or sureties, and, if the certified copy is so used, the court shall presume that the offence was committed by him unless the contrary is proved.

24. There are legal consequences when an accused person absconds. Bail was cancelled and the sum deposited in court forfeited. The 1st Applicant was subsequently escorted to court by another person. He was required to give a plausible explanation as to why he failed to attend trial.

25. The explanation given by the stranger to proceedings was that the Applicant had mental challenges and that he had disappeared from home, a fact not disclosed when he appeared in court. The explanation was given by a police officer who alleged to be a family friend. He sought reinstatement of bond. He was not a legal representative of the 1st Applicant to make such an application. In fact, he was not a party in the matter. It is not clear under what circumstances the court gave him audience.

26. The 2nd Applicant annexed a medical report authored by Dr. Alfred Gitonga a psychiatrist based at Mathari National Teaching and Referral Hospital. The trial court saw and read the reports but was of the view that such reports should have been presented to court during plea taking in the instant the court directed the 1st Applicant to be subjected to another examination. And, in the report dated 25th November, 2025 by Dr. Bahati Standa, the 1st Applicant was of sound mind and able to follow proceedings. It is urged that by then he was on medication and had already been treated.

27. The law provides for an opportunity for an explanation to be rendered. Where the court is dissatisfied like in the instant case any order made is appealable and not a subject of review.

28. The learned Magistrate followed laid down procedure in dealing with the matter hence there was no irregularity or illegality in the process that would make this court act in its revisionary jurisdiction.

29. I have been asked to transfer the case to another court in the interest of justice and fairness. Notably, no submissions were tendered to expound on the question of transfer of the case from the court seized of the matter. **Section 81 of the Criminal Procedure Code** provides thus;

(1)Whenever it is made to appear to the High Court—

(a)that a fair and impartial trial cannot be had in any criminal court subordinate thereto; or

(b)that some question of law of unusual difficulty is likely to arise; or

(c)that a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the offence; or

(d)that an order under this section will tend to the general convenience of the parties or witnesses; or

(e)that such an order is expedient for the ends of justice or is required by any provision of this Code, it may order—

(i)that an offence be tried by a court not empowered under the preceding sections of this Part but in other respects competent to try the offence;

(ii)that a particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other criminal court of equal or superior jurisdiction;

(iii)that an accused person be committed for trial to itself.

(2)The High Court may act on the report of the lower court, or on the application of a party interested, or on its own initiative.

(3)Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Director of Public Prosecutions, be supported by affidavit.

(4)An accused person making any such application shall give to the Director of Public Prosecutions notice in writing of the application, together with a copy of the grounds on which it is made, and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of notice and the hearing of the application.

(5)When an accused person makes any such application, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

30. This is a case where the 1st Applicant did not apply to have the matter transferred from the trial Magistrate for one reason or another where the trial court would have reflected on the application and either recused itself or not.

31. No doubt **Article 50 of the Constitution** guarantees an accused person fair trial. It has not been suggested that the trial court was biased or made the orders in question because of conflict of interest. For that reason, *per se*, the application must be declined. In **Joseph Korir alia David Arap Chango v Republic [2018] eKLR** the court relied on **Kamande & 3 Others v Republic [2014]** and stated that;

“When giving consideration to an application for the transfer of a case, the court will assess whether the applicant’s apprehension was reasonable and founded on sufficient material. The reason for laying emphasis on these factors is that the court has a duty to encourage trust in the integrity and independence of the Judiciary. Therefore, allegations which may be directed at Judicial Officers, alleging bias and lack of fairness must not therefore be accepted without there being substantive evidence to back them.

If a court was too quick to accept allegations of bias directed against its officers, without first demanding proper substantiation, it would erode the very foundation upon which the judiciary was founded. At the same time, the court must balance this consideration with the need to ensure that justice is not only done, but also seen to be done.”

32. In *Maina wa Kinyatti v Republic [1984] KECA 22 (KLR)* the Court of Appeal considered the question of transfer of a case and observed thus;

“In Hashimu ibid the Tanzania High Court (Saidi J) held that the accused person i.e. the applicant, must make out a clear case before a transfer of any trial is granted on his application and the apprehension in his mind that he will not have a fair and impartial trial before the magistrate from whom he wants the trial transferred must be reasonable. Two High Court of Kenya Judges adopted what was said in Hashimu (Sachdeva J) in Francis Henry Karanja v Republic HC Cr application No 107 of 1976 (unreported) and Traveyan J in John Brown Shileuje v Republic HC Cr Application No 180 of 1980 (unreported). All these cases have not departed from what Hamilton CJ said In the matter of an application by MS Patel, (1913/1914)5 KLR 66, Patel, who was an advocate of the High Court of East Africa practicing at Lamu was summoned before the town magistrate at Lamu for assaulting his servant. Before the hearing he notified the magistrate that he intended to apply to the High Court for a transfer of his case to some other court under section 526 of the Criminal

Procedure Code of the time. The magistrate proceeded to hear the case and Patel made his application.”

33. This court finds the allegations to be mere speculation which does not warrant orders sought.

34. In the premises, the application is bereft of merit. Accordingly, it is dismissed.

35. It is so ordered.

Dated, signed and delivered virtually this 23rd day of February, 2026.

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L.N. MUTENDE

JUDGE