

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL REVISION NO. E019 OF 2026**

BRIAN GITAU KINYANJUI.....APPLICANT

VERSUS

REPUBLIC.....  
RESPONDENT

**RULING**

1. Before the trial court, the Applicant faces a charge of rape contrary to section 3(1)(a)(c) as read with section 3(3) of the Sexual Offences Act, No. 3 of 2006. He pleaded not guilty to the charge and subsequently applied to be admitted to bail/bond pending trial. In a ruling delivered on 13<sup>th</sup> February 2026, the trial court declined to admit the Applicant to bail on the grounds that he was a flight risk and there existed a likelihood of witness interference.
2. Aggrieved by that decision, the Applicant filed the present Notice of Motion dated 20<sup>th</sup> February 2026 seeking revision of the trial court's orders denying him bail/bond. The application is supported by the affidavit sworn by the Applicant on even date. The Applicant prays that this court be pleased to revise the impugned ruling and admit him to reasonable bail/bond terms pending the hearing and determination of the criminal case before the subordinate court.
3. The Applicant avers that the trial court erred in finding that he was a flight risk. He contends that he has a known place of residence and resides with his mother, a fact which was disclosed in his submissions before the trial court and acknowledged in the impugned ruling. He further denies ever contacting or attempting

to contact the complainant as alleged and maintains that no evidence was tendered to substantiate the allegation of witness interference. The Applicant states that he is willing to abide by any conditions that may be imposed by the court, including the surrender or deposit of his passport, reporting obligations, or restrictions against contacting witnesses. He further asserts that bail is a constitutional right guaranteed under Article 49(1)(h) of the Constitution and undertakes to attend court whenever required and to fully comply with all bail terms imposed by the court.

4. The Respondent did not file any replying affidavit or grounds of opposition to controvert the application. The application was canvassed by way of oral submissions, which this court has duly considered alongside the record of the proceedings before the trial court and the impugned ruling.
5. The issue for determination is whether this court should exercise its revisionary jurisdiction and interfere with the orders of the trial court denying the Applicant bail/bond pending trial.
6. 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.”**
7. 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.

8. The record shows that the Applicant took plea on 6<sup>th</sup> February 2026 and denied the charge. His application for bail pending trial was heard and, in a ruling delivered on 13<sup>th</sup> February 2026, the trial court declined to admit him to bail on the grounds that he was a flight risk and was likely to interfere with witnesses. The court noted that the Applicant allegedly had no known residence and had attempted to flee to the Philippines. The court further relied on the pre-bail report in which the complainant expressed apprehension of possible interference by the Applicant. There was also an allegation that the Applicant attempted to contact the complainant, which allegation he denied. Consequently, the trial court found that the Applicant posed a flight risk and that there existed a likelihood of witness interference.

9. Bail is a constitutional right guaranteed under Article 49(1)(h) of the Constitution, which provides that:

**“An arrested person has the right—**

**(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”**

10. Section 123A(1) of the Criminal Procedure Code further provides that:

**“Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—**

**(a) the nature or seriousness of the offence;**

**(b) the character, antecedents, associations and community ties of the accused person;**  
**(c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and**  
**(d) the strength of the evidence of his having committed the offence."**

11. The Bail and Bond Policy Guidelines at paragraph 4.9 further state:

**"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."**

12. Further, Article 50(2)(a) of the Constitution guarantees every accused person the right "to be presumed innocent until the contrary is proved." In line with this constitutional safeguard, the Bail and Bond Policy Guidelines provide 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."**

13. The Applicant is a Kenyan citizen and, according to the pre-bail report, resides with his mother at Garden Estate, Nairobi. He

is self-employed as a software developer and works from home, factors which demonstrate that he has identifiable social and residential ties within the jurisdiction of the court. The existence of a fixed place of abode and a known source of livelihood are material considerations in assessing the likelihood of an accused person attending trial.

14. The record further does not disclose any previous instance where the Applicant failed to honour court attendance or absconded from lawful process. While the prosecution alleged that the Applicant had attempted to flee to the Philippines, no documentary or independent evidence was placed before the court to substantiate that assertion. No travel records, immigration alerts, airline bookings, or other objective material were produced to demonstrate a deliberate attempt to leave the jurisdiction with the intention of evading trial. The allegation therefore remained speculative.
15. Further, although the complainant expressed apprehension of intimidation, it is noteworthy that she did not know the Applicant prior to the alleged incident. The apprehension expressed was therefore not supported by any demonstrated history of threats, coercion, intimidation, or improper communication capable of establishing a real likelihood of interference. In the circumstances, the court must carefully balance such apprehension against the Applicant's constitutional right to liberty and the presumption of innocence guaranteed under Article 50(2)(a) of the Constitution.
16. From the material placed before the court, there is no cogent evidence demonstrating that the Applicant is a flight risk or that he has taken steps aimed at defeating the course of justice. The

mere fact that an accused person possesses the ability or opportunity to travel outside the jurisdiction does not, without more, amount to proof of an intention to abscond. Courts are required to act on credible and verifiable evidence rather than conjecture or suspicion.

17. Equally, there is no sufficient material establishing actual or attempted witness interference. Beyond the allegation that the Applicant attempted to contact the complainant, which allegation he expressly denied, no call records, messages, witness statements, or other evidentiary material were produced to substantiate the claim. In the absence of concrete evidence, the apprehension of interference remains speculative and incapable, on its own, of amounting to a compelling reason for denial of bail.
18. In any event, any residual concern regarding possible interference with witnesses or non-attendance at trial can adequately be mitigated through the imposition of strict and reasonable bail conditions. Taken cumulatively, these safeguards substantially mitigate any perceived risk of absconding or interference while simultaneously safeguarding the Applicant's constitutional right to liberty pending trial.
19. From the foregoing, the application for revision dated 20<sup>th</sup> February 2026 is allowed in the following terms:
  - I. The Applicant, Brian Gitau Kinyanjui, is hereby admitted to bond Kenya Shillings Five Hundred Thousand (Kshs. 500,000) 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 12<sup>th</sup> day of May  
2026**

**D. KAVEDZA  
JUDGE**

**In the presence of:**

Mr. Kinyanjui for the Applicant

Mr. Mutuma for the Respondent

Karimi Court Assistant.