



**Mwaura alias Rachel Maithya alias Shiru & another v Republic (Miscellaneous Criminal Application E043 of 2025) [2025] KEHC 11699 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11699 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CRIMINAL APPLICATION E043 OF 2025  
FN MUCHEMI, J  
JULY 31, 2025**

**BETWEEN**

**GRACE MUTHONI MWAURA ALIAS RACHEL MAITHYA ALIAS  
SHIRU ..... 1<sup>ST</sup> ACCUSED**

**FELISTER MWAKALI MATHEWS ..... 2<sup>ND</sup> ACCUSED**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Brief Facts**

1. The application for determination dated 5<sup>th</sup> June 2025 seeks for review of bond terms on reasonable terms. The 1<sup>st</sup> applicant states that her names have been confirmed by the prosecution through the investigation officer to be Linet Wambui Ngatho but the prosecution has refused to amend the charge sheet to read her true names.
2. The applicants was charged in Thika Criminal Case No. E726 of 2025 with three counts: Count I is of the offence of stupefying in order to commit a felony contrary to Section 230 of the Penal Code Count II is of stealing contrary to Section 268(1) as read with Section 275 of the Penal Code. Count III is the offence of conspiracy to commit a felony contrary to Section 383 of the Penal Code.
3. The applicants pleaded not guilty to the three counts and the trial magistrate declined to grant them bail on the grounds that the 1<sup>st</sup> applicant used a forged National ID Card during investigations and the 2<sup>nd</sup> applicant knew the 1<sup>st</sup> applicant but failed to disclose to the investigation officer her real names.
4. The 1<sup>st</sup> applicant denies knowingly using or presenting forged identity documents and state that no such evidence was presented or proven in court at the bail hearing. The 2<sup>nd</sup> applicant states that she



was arrested separately and further under Article 49(1)(b) of *the Constitution*, she has a right to remain silent and is under no legal obligation to assist the police by providing names of other suspects.

5. The applicants state that the trial magistrate erred in law and in fact by treating the allegation as proven contrary to her constitutional right to be presumed innocent. The applicants further state that they are both residents and business women in Thika town with strong ties to the community and therefore not flight risks.
6. The applicants aver that they have never been charged in Nairobi or Nyali in Criminal Case No. E169 of 2025 as alleged in the Affidavit of PC No. 111778 Harrison Sesi. The applicants further state that the parties in Nairobi Criminal Case No. E169 of 2025 are Republic vs Kevin Omondi Jairo and in Nairobi City Court Criminal Case No. E169 of 2025, Republic vs Ernest Kariuki and Charles Karoni in Mombasa Criminal Case No. E169 of 2025 Republic vs Rumi Ojwang and Ann Muvue.
7. In opposition to the application, the respondent filed a Replying Affidavit dated 9<sup>th</sup> July 2025 and states that the applicants were charged in Thika Criminal Case No. E726 of 2025 and denied bond as they are a flight risk and will most likely not attend court if released on bond. The respondent states that the applicants have not demonstrated that the ruling was erroneous, illegal, tainted with incorrectness or impropriety.
8. The respondent argues that the learned magistrate after considering the affidavit in opposition of bond by the prosecution, found compelling reasons to deny the applicants bond. The respondent further argues that the applicants have not shown that the trial magistrate in exercising her discretion misdirected herself in some matter thereby arriving at a wrong decision. In the absence of any manifest irregularity or illegality in the decision thereof, there is no basis for faulting the learned magistrate for denying the applicants bond.
9. The respondent states that the trial court came to a good conclusion that the decision may be reviewed or varied after the evidence of the complainant or changes in the circumstances.
10. Parties disposed of the application by way of written submissions but the applicants elected not to put in written submissions.

### **The Respondent's Submissions**

11. The respondent relies on Article 49(1)(h) of *the Constitution*, Section 123(A) of the Criminal Procedure Code and the case of Republic vs Danson Mgunga & Another [2010] eKLR and submits that in bail or bond applications the primary consideration must always be the ability of the accused to attend trial unless there are compelling reasons demonstrated. Relying on the cases of Republic vs Pascal Ochieng Lawrence [2014] eKLR and Republic vs Joshua Mueke Mutunga & 3 Others [2020] eKLR, the respondent submits that the applicants are a flight risk and are likely to flee and fail to attend court if released on bond. The applicants were in cahoots in concealing the true identity of the 1<sup>st</sup> applicant and they are charged with similar cases in other courts, thus the possibility of them absconding is not farfetched.

### **The Law**

12. The High Court's power of revision is set out in Article 165 (6) and (7) which provides:-
  - (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 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.
13. Section 362 of the Criminal Procedure Code provides:-
- The High Court may call 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.
14. Section 364(1) of the Criminal Procedure Code provides:-
- In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may”-
- a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;
  - b. In the case of any other order other than an order of acquittal alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.
15. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of Joseph Nduvi Mbuvi vs Republic [2019] eKLR:-
- “In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”
16. Similarly Nyakundi J in Prosecutor vs Stephen Lesinko [2018] eKLR outlined the principles which will guide a court when examining the issues pertaining to section 362 of the Criminal Procedure Code as follows:-
- a. Where the decision is grossly erroneous;
  - b. Where there is no compliance with the provisions of the law;
  - c. Where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;
  - d. Where the material evidence on the parties is not considered; and
  - e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.



17. The above provisions convey jurisdiction to this court to exercise revisionary powers in respect of orders of the subordinate courts. This court is therefore possessed of the requisite jurisdiction to hear and determine this application.
18. From the trial court record, the applicants were charged with three counts with Count I is the offence of Stupefying in order to commit a felony contrary to Section 230 of the Penal Code, Count II is the offence of stealing contrary to Section 268(1) as read with Section 275 of the Penal Code and Count III is the offence of Conspiracy to commit a felony contrary to Section 383 of the Penal Code and pleaded not guilty on all four counts on 27<sup>th</sup> March 2025. On the same day, the accused persons applied for bail or bond pending trial and the prosecution opposed the same on the basis that the accused persons are a flight risk as the true identity of the 1<sup>st</sup> applicant could not be ascertained. Furthermore, the prosecutor informed the trial court that the applicants were charged with the same offence in Shanzu Law Court in Criminal Case No. 1654 of 2025. On 8<sup>th</sup> May 2025, before the court read out the ruling the prosecution amended the charge sheet on the ground that the 1<sup>st</sup> applicant was confirmed to be named Linet Wangui Gathu. The applicants then entered plea of not guilty on the new charges and the trial court directed that the bond terms would be delivered after the prosecution supplies the applicants the results from the registrar of persons. The trial court rendered its ruling on 20<sup>th</sup> May 2025 and denied the applicants bail or bond on the ground that they were likely not to attend court for trial.
19. I have perused the court record and noted that the 1<sup>st</sup> applicant upon arrest did not disclose who she was as she presented a fake identity card. Furthermore, the 2<sup>nd</sup> applicant did not inform the arresting officer that the 1<sup>st</sup> applicant was concealing her identity which led the magistrate to believe the prosecution that the two applicants were working together to defeat the prosecution process. I have also noted that the applicants were charged for a similar offence in Shanzu Law Courts in Criminal Case No. E169 of 2025.  
  
The magistrate came to a conclusion that the applicants were flight risks.
20. The 1<sup>st</sup> applicant lied to the investigating officer upon arrest in regard to her names. The concealing of her correct identity cannot be taken lightly especially whereas a person is facing a criminal charge and has a similar case pending in another court where bond was denied. The 2<sup>nd</sup> accused was not innocent either for she is an accomplice of the 1<sup>st</sup> applicant in the Shanzu case in that he did not alert the investigative authorities about the concealment of her true identity.
21. I come to the conclusion that the magistrate did not commit any error, mistake, irregularity or impropriator in denying bond to the two accused persons in the first instance. The order of the court was to be in force pending the testimony of the complainant to be taken. Thereafter, the applicants may apply for review of the bail terms.
22. I therefore find that this application dated 5<sup>th</sup> June 2025 lacks merit and is hereby dismissed.
23. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**F. MUCHEMI**

**JUDGE**

