



REPUBLIC OF KENYA



**Ombui v Odpp (Miscellaneous Criminal Application E077 of 2025)  
[2025] KEHC 11993 (KLR) (11 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11993 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CRIMINAL APPLICATION E077 OF 2025  
RN NYAKUNDI, J  
AUGUST 11, 2025**

**BETWEEN**

**JOYCE ISOYA OMBUI ..... APPLICANT**

**AND**

**ODPP ..... RESPONDENT**

**RULING**

1. What is pending before this court for determination is a Notice of Motion application dated 20<sup>th</sup> May 2025 in which the Applicant is seeking the following orders:
  - a. That this Honorable court be pleased to review the lower court bond cancelled on 13/03/2025 vide its ruling delivered on that day in Criminal S/O No. 62 of 2017.
  - b. That this Honorable court be pleased to reinstate the accused/applicant bond.
  - c. That Honorable court be pleased to issue any other order in the interest of justice.
2. The Application is made on the following grounds on the face of it among others that;
  - a. This Honorable court released the accused on a bond of Kshs 50,000/-with one surety of a similar amount.
  - b. That posted a title deed and the accused/petitioner was released and continued to attend court from home.
  - c. That at some point the file got misplaced and when the accused attended court, he was informed by the court assistant that the file was missing, but once he finds the file he will communicate
  - d. That later the court assistant by the name Mr. Wafula was transferred and the new court assistant never informed the accused person of the next date the matter was coming.



- e. The date the accused person realized that the file had been found and on attending court session on 13th March, 2025 his bond was cancelled.
  - f. The accused's uncle who deposited the title deed that is still within the court, is now able and willing to help the accused/petitioner by extending the same title deed to as a bond to the petitioner.
  - g. That the accused/petitioner's parents and the surety are also able and willing to help the accused/petitioner and the court by making sure that the accused attend all court sessions.
3. The application is supported by annexed affidavit of Joyce Isoya Ombui who deponed as follows on oath:
- a. That I have been personally in conduct of this matter hence competent to swear this affidavit.
  - b. That I am the petitioner, the accused person herein.
  - c. That I was charged in court with the offence of defilement and released on a bond of Kshs 50,000/=
  - d. That the matter came up in court on the 13<sup>th</sup> March, 2025 for mention where the prosecution raised the issue of non-attendance.
  - e. That on 13<sup>th</sup> March, 2025 the Honorable Court delivered a ruling
  - f. That the Honorable court cancelled my bond on grounds that I failed to attend court sessions.
  - g. That my non-attendance to court was occasioned by court assistant omission by failing to inform me that the missing file had been found.
  - h. That I kept following on my case but never got a positive response only to know on the next mention date and on attendance my bond was cancelled.
  - i. That there was no evidence availed to incriminate me or neither brought to court under arrest
  - j. That I am nonetheless willing to stay within the court's jurisdiction as a counter measure during the pendency of this matter
  - k. That I being incarcerating in remand where there are no alternative remedies is an injustice.
  - l. That I undertake to abide by all the terms of the bond that will be issued.
  - m. That I pray to the Honorable Judge for my bond to be rein stated.
  - n. That it is in the interest of justice that this application be allowed.
  - o. That I swear this affidavit in support of the application herein.
4. The Application is opposed vide a Replying Affidavit dated 5<sup>th</sup> June 2025 sworn by S.G Thuo who avers as follows;
- a. That I am a Prosecution Counsel currently at the Office of the Director of Public Prosecution, Uasin Gishu, seized with the facts in this matter and hence competent to swear his affidavit.
  - b. That I have read and understood the Notice of Motion Application dated 20<sup>th</sup> May, 2025 and the Supporting Affidavit annexed thereto, and having understood the same wish to respond as follows in opposition of the application to deny the Applicant herein bail and bond:



- c. That the accused person's bond terms were withdrawn by the trial court vide SO No 62 of 2017 on the 13<sup>th</sup> day of March, 2025, 8 years after the matter was first registered in court.
- d. That the applicant is deliberately economical with the truth and is seeking to apportion blame to a "Court assistant who was transferred who failed to inform the applicant to attend court sessions".
- e. That the doctrine of laches and also the deliberate non-disclosure of material facts leading to the cancellation of the applicants' bond terms before this Honorable Court of Record must lead the court to make an adverse finding against the applicant.
- f. That the right to bail/bond is not an absolute right of an accused person and am privileged to quote the dicta of DO Ogembo J (as he then was) in *R v Rabudbi* [2024] KEHC 1844 KLR in his ruling suspending bond, delivered at Siaya on the 24<sup>th</sup> day of February, 2024, that..."the applicant had been on the run since the year 2020.....release on bond was not an opportunity to escape never to turn up for his trial...." as is replicated in the current matter.
- g. That the Applicant has not demonstrated any grain of proof that the circumstances that led to his withdrawal of bond, have changed.

### Decision

5. This application is based on the provisions of sections 362 & 364 of the *Criminal Procedure Code*. The applicant being aggrieved with cancellation of bond terms approached this court to have the decision reviewed. The power of revision is discretionary, but it must be exercised judicially and on fixed principles, not according to the dictates of sympathy or benevolence. The court must therefore consider the competency of the application, bearing in mind the provisions of Article 165(6) and (7) of the *Constitution* as read with Sections 362 and 364 of the *Criminal Procedure Code* (CPC). It is also the law in Kenya, under Section 382 of the *CPC*, that no order shall be reversed or varied on account of an error or defect unless there is evidence of prejudice or a likelihood of injustice. The applicant must therefore demonstrate that, in cancelling the bond terms, the learned trial magistrate exercised his jurisdiction illegally or with material irregularity.
6. In the instance case certainly no evidence has been presented on illegality, irregularity and impropriety of the impugned decision to warrant this court exercise its jurisdiction to review the order being complained of by the applicant. Going a step further it has not been shown by the applicant that there is an error or omission on the part of the court which is self-evident and sufficient to set aside bond terms cancellation.
7. The application is therefore lost for want of merit. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> AUGUST 2025**

.....

**R. NYAKUNDI**

**JUDGE**

