



**Cheruiyot v Republic (Criminal Revision E094 of 2024)  
[2024] KEHC 13225 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13225 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL REVISION E094 OF 2024  
JK SERGON, J  
OCTOBER 31, 2024**

**BETWEEN**

**RONALD CHERUIYOT ..... APPLICANT**

**AND**

**REPUBLIC ..... PROSECUTOR**

**RULING**

1. Pursuant to the Provisions of Section 362 of the *Criminal Procedure Code*, the Hon. Chief Magistrate, Kericho placed the proceedings relating to Kericho CMCCRC. No.E155 of 2024 – *Republic -vs- Vincent Kiprono* before this Court for perusal and consideration in exercise of its supervisory Power of revision under Section 364 of the *Criminal Procedure code*.
2. This court has perused the trial court’s record and it is apparent that one Vincent Kiprono, the accused was arraigned before Hon. Claire Odunga, Learned Resident Magistrate to face a charge of having suspected stolen property Contrary to Section 323 of the *Penal Code*.
3. The Accused pleaded not guilty to the offence and was released upon signing a bond of Kshs.50,000/=.
4. The record further shows that one Ronald Cheruiyot hereinafter referred to as the Applicant stood as a surety for the accused. It appears the Applicant offered his payslips as Security for bond.
5. The record further shows that the accused breached the bond terms and failed to attend court on several occasions. On 18<sup>th</sup> March, 2024, the Learned Resident Magistrate cancelled the bond and summoned the surety to appear before the Court on 16<sup>th</sup> April, 2024 presumably to show cause.
6. It is also apparent that the Learned Resident Magistrate issued warrants of arrest against the accused person which warrants are yet to be executed to date.



7. On 30<sup>th</sup> October, 2024, the applicant surety, presented himself in court and informed the court that the accused's wife had told him that the accused left the Country for the U.K. two months ago, and could not therefore be traced.
8. The Learned Resident Magistrate stated that the applicant had failed to honour his obligation of ensuring that the accused attends court. She proceeded to order him to be held at G. K. Prisons, Kericho for six (6) months.
9. Under Section 362 of the *Criminal Procedure Code*, this court can exercise its power of revision by examining the record of Criminal Proceedings of a subordinate court to satisfy itself inter alia as to correctness, legality or propriety of any finding, sentence or order recorded or passed.
10. Having perused the record, it is clear that the Learned Resident Magistrate incorrectly penalized the surety. The best that should have happened was to order for the forfeiture of the sum of the bond by attaching the salary of the applicant.
11. A custodial sentence or penalty was not warranted in the circumstances of the case.
12. It is clear from the proceedings that the applicant had explained and gave reasons why he could not secure the accused's attendance in Court.
13. The explanation the applicant gave appear to be plausible and reasonable, hence the surety should not have been penalized.
14. The order directing the applicant to be held at G. K. Prisons, Kericho is incorrect and uncalled for. The same is hereby set aside.
15. This court finds that the explanation given by the surety to be sufficient hence it should not have attracted any penalty as against the applicant.
16. Consequently, the applicant namely:- Ronald Cheruiyot should be set free from G. K. Prisons, Kericho forthwith.
17. However, he shall continue standing as surety for the accused pending the hearing of the case before the trial court and further orders and directions of that Court.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 31<sup>ST</sup> DAY OF OCTOBER, 2024.**

.....

**J. K. SERGON**

**JUDGE**

