



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Revision E137 of 2024)
[2024] KEHC 15873 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15873 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E137 OF 2024
H NAMISI, J
DECEMBER 18, 2024**

BETWEEN

MARY NJERI MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a Revision of the Orders of Hon. Mutua, Chief
Magistrate in Thika Criminal Case No. E3746 of 2023)*

RULING

1. Before the Court is a Notice of Motion dated 30 July 2024 seeking the following orders:
 - i. That this Honourable Court be pleased to recall Criminal Case File No 3746 of 2023; Republic v Mary Njeri Mwangi for revision;
 - ii. That Honourable Court be pleased to vacate and/or set aside the orders issued by Hon. P. Mutua, CM on 22 April 2024 ordering the forfeiture of cash bail and issuance of warrants of arrest;
 - iii. That this Honourable Court be pleased to vacate and/or set aside the orders issued by Hon. P. Mutua, CM, on 29 May 2024 dismissing Application by counsel for reinstatement of the cash bail forfeited and ordering deposit of another cash bail of Kshs 400,000/=;
 - iv. That this Honourable Court be pleased to revise the order issued by Hon P. Mutua, CM ordering fresh cash bail be deposited by the Applicant;
 - v. That the honourable Court be pleased to order reinstatement of the cash bail forfeited and refund of the additional cash bail deposited on 29 May 2024



2. The Application is supported by the Affidavit of Mary Njeri Mwangi and premised on the grounds on the face of it. The Applicant averred that she was granted cash bail of Kshs 400,000/- by the plea court. The matter was then slated for hearing on 22 November 2023 but did not proceed since the Court was away on official duty. When the matter was scheduled to proceed on 22 April 2024, the Applicant arrived late, for reason that from 22 to 28 April 2024, Thika Road was impassable due to heavy rain and flooding. The Applicant spent a better part of the morning trying to find her way to court. Due to her absence, the trial court issued warrants of arrest and her cash bail was forfeited. The Applicant averred that this was the first time that she was late for court.
3. On 29 May 2024 when the matter came up before Hon. P. Mutua, Chief Magistrate, Counsel for the Applicant requested that the cash bail be reinstated and the warrants of arrest lifted. The same was denied. The Applicant averred that failure by the Court to accord her an opportunity to be heard and show cause why the cash bail should not be forfeited was a breach of natural justice and in contravention with criminal procedure.
4. The Applicant attributed the delay in filing this application to the delay in obtaining certified copies of proceedings from the Registry.
5. The Respondent did not oppose the Application.

Analysis & Determination

6. Section 131 of the *Criminal Procedure Code*, Cap. 75 requires a court to make inquiry of the accused, and a surety if any, before making an order for forfeiture of cash bail. Section 131 (1) and (2) of the Code provides:
 - 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 movable property belonging to that person, or his estate if he is dead.
7. The above section requires a court to request a party to show cause why cash bail should not be forfeited. This seems not to have been done by the trial court. The application of that section was considered in the case *Peter Gitari Mwiandu v Republic* [2017] eKLR.

“The trial court’s record indicates that the procedure of forfeiture under Section 131 of Cap 75 was not followed. The trial court failed to ensure that Mwiandu was accorded the right to be heard. Mwiandu should have been served with a notice to show cause. It is only after the trial court had considered that cause shown by Mwiandu that the trial court could have ordered for forfeiture. This is what was stated in the case *Isaac Kiplangat Mutai v Republic* [2013] eKLR. Viz:

“On the second issue, the order of forfeiture of the cash bail, it is the requirement of Section 131 of the Criminal Procedure Code that the court will first make an inquiry of the accused or his surety to show cause why his recognizance should not be forfeited. The order forfeiting his cash bail cannot therefore be made simultaneously with the order cancelling bail/bond.



The accused as well as the surety is required to be granted opportunity, to a hearing, to show cause why his bail/bond should not be forfeited to the state. Failure to do so in a grave breach of the rules of natural justice.”

8. Further, in the case *Isaac Kiplangat v Republic* (*supra*), the court stated thus:

“On the second issue, the order of forfeiture of the cash bail, it is the requirement of Section 131 of the Criminal Procedure Code that the court will first make an inquiry of the accused or his surety to show cause why his recognizance should not be forfeited. The order forfeiting his cash bail cannot therefore be made simultaneously with the order cancelling the bail/bond. The accused as well as the surety is required to be granted opportunity, to a hearing, to show cause why his bail/bond should not be forfeited to the State. Failure to do so is a grave breach of the rules of natural justice.

I therefore set aside the orders of forfeiture without due process, of the cash bail of Kshs 100,000/= and the further order for Sh 150,000/= and sh 200,000/= surety as being manifestly unjust. I direct that the cash bail of shs 100,000/= paid by the accused be restored to the credit of the accused, and he be granted bail on the said basis of Kshs 100,000/= cash bail.”

9. From the above it is clear the trial court failed to give an opportunity to the Applicant to show cause before forfeiting her cash bail. That was in contravention of section 131 of the Criminal Procedure Code. That contravention will lead to the revision/setting of those orders because those orders were irregular.

10. In view of the foregoing, I make the following order in respect to Thika Criminal Case No E3746 of 2023:

- (a) The order of 22 April 2024 for forfeiture of cash bail is hereby set aside and vacated;
- (b) The order of 29 May 2024 requiring further cash bail to be provided by Mary Njeri Mwangi is set aside and vacated;
- (c) The bail terms of 31 August 2023 are hereby restored.
- (d) Refund shall be made in respect to cash bail paid in compliance with the order of 29 May 2024

DATED AND DELIVERED AT THIKA THIS 18 DAY OF DECEMBER 2024.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Kingangi.....for the Applicant

N/A.....for the Respondent

