



**Nalobile v Republic (Miscellaneous Criminal Revision  
257 of 2023) [2023] KEHC 21809 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21809 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
MISCELLANEOUS CRIMINAL REVISION 257 OF 2023**

**REA OUGO, J  
JULY 28, 2023**

**BETWEEN**

**TYETYE SIMON NALOBILE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Tyetye Simona Nalobile , the applicant, stood surety for the Accused Phanuel Ashioya in CMCC No E095 of 2022. The bond terms for which he stood surety were as follows ;  
  
'Accused may be released on a cash bail of Kshs 100,000/- or bond of Kshs 200,000/- with one surety of like amount'.
2. On signing the surety document form Criminal 95, the applicant gave the court an undertaking that he will produce the accused at any time that the accused is required to attend court and that he binds himself to forfeit the sum of Kshs 200,000/-. His surety document that was approved was an Introductory Letter from TSC County Director dated the September 1, 2022 which confirms that he is a teacher employed by Teachers Service Commission ( TSC) under permanent and pensionable terms. That he is currently stationed at Lutonyi FYM Primary School in Kimilili Sub- County, Bungoma. He produced a payslip bearing the numbers PF xxxx in the name of Tyetye Simon Nalobile and his net pay is indicated as Kshs 13,000/- He also undertook to forfeit the surety sum in the event the accused does not attend court and a warrant of arrest is issued against the accused. A warrant of arrest was issued by the trial court on the October 22, 2022 , after the accused failed to attend court. A summons to the surety was issued on the February 6, 2023. On the February 20, 2023 a warrant of arrest was issued for the surety after he failed to attend court. The applicant appeared before the trail court on the February 22, 2023 and sought time to trace the accused person. He sought more times on the following dates, March 6, 2023, May 4, 2023 and June 5, 2023 when the court gave him the last adjournment. On the July 5, 2023 the surety was back in court again and the prosecution sought to him show cause why he



should not forfeit the sum of Kshs 200,000/-. The surety informed the court that there was a pastor called Lusweti who introduced him to the accused. That an action should be taken against Lusweti. That it is as if he is colluding with the accused. The Court ruled that there was no good cause shown by the surety and he was ordered to pay Kshs 200,000/- or in default to serve six months imprisonment.

3. The applicant in this application seeks to have the court order revised and set aside and that the surety the court be pleased to admit the applicant to a bond pending payment in full of Kshs 200,000/- being the bond amount in Bungoma MSCO No E095 of 2022 in installments to be deducted from his payslip. The applicant in his affidavit in support of the application depones that he has made a lot of efforts to trace the accused. That he is a teacher employed by TSC and is likely to lose his employment by virtue of the 6- months jail term. That he is willing to have his salary shelved monthly towards payment of the Kshs 200,000/-. That he is the sole bread winner of his family and his continuous incarnation leaves his family in dire need of support and provision of basic needs.
4. The application was canvassed by way of oral submissions. Mr Olonyi for the applicant reiterated what is deponed by the applicant. He submitted from the bar that the applicant is ready to deposit a sum of Kshs 50,000/- and that he will pay Kshs 10,000/- monthly until the entire sum of Kshs 200,000/- is paid in full. That the surety presented himself to court and was not arrested and that he is willing to comply with any terms the court will set and if the accused is arrested he will present him in court.
5. Miss Omondi for the respondent submitted that the section the application is brought under by the applicant is one that deals with the court's supervisory jurisdiction. That the applicant has failed to show that the court proceedings were not proper. That the applicant did not disclose the efforts he made to trace the accused and that he has not attached his current payslip, but that if he is willing to deposit the sum in court then he can be given the benefit of doubt as detaining him should be the last resort. That the application can be allowed to that extent.

### **Determination**

6. The application is brought under the following provisions Article 47 (1) and 50 ( 2) (q) of the Constitution of Kenya 2010, sections 362, 364 and 367 of the Criminal Procedure Code (CPC) Cap 75 Law of Kenya. I have read the said provisions. Section 362 empowers this court to ; to 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. The court record indicates that the surety was given a chance on more than one occasion to produce the accused in court .After being asked to show cause and on hearing the applicant the court found that he had not shown any good cause and he was ordered to pay the sum of Kshs 200000/-. These proceedings were properly conducted and the trial court was exercised his discretion as provided in law, see section 131 (1) & (4) of the CPC Section 364 (1) (b) of the CPC provides as follows that in a case of a proceeding in a subordinate court the record of which has been called for or which has been reported orders, or which otherwise comes to its knowledge the High Court in the case of any other order other than an order of acquittal, alter or reverse the order.
7. The applicant is willing to abide by any condition set by this court. His main worry is that he might lose his job. I note that he made some efforts to trace the accused, the only mistake he made was to take up an obligation that has caused his committal for six months. He has offered to pay a sum immediately into court. He has shown some good faith. I will therefore revise the orders issued by the trial court on the applicant shall pay a sum of Kshs 100,000/- forthwith and upon payment he will released from prisons. He shall pay the remainder of Kshs 100,000/- by paying a sum of Kshs 10000/- each month until payment in full. In default of any instalment, he will be arrested and committed to



serve the remainder of the imprisonment term. Upon full payment the surety can approach the court as provided in law for appropriate orders. Orders accordingly.

**DATED , SIGNED AND DELIVERED AT BUNGOMA THIS 28<sup>TH</sup> DAY OF JULY 2023.**

**R.E.OUGO**

**JUDGE**

