



**Mogire v Republic (Miscellaneous Criminal Application
31 of 2022) [2023] KEHC 21773 (KLR) (30 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21773 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CRIMINAL APPLICATION 31 OF 2022**

**PM MULWA, J
AUGUST 30, 2023**

BETWEEN

BETH NYAMBURA MOGIRE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application by a notice of motion dated June 15, 2022 is filed by Beth Nyambura Mogire, the applicant herein. It is brought under the provisions of sections 131, 362, 364, 365, 366 and 367 of the *Criminal Procedure Code*, and articles 49, 50, 159(2) of *the Constitution* of Kenya, 2010. The applicant seeks the following orders:
 - i. That the court orders the production of the virtual proceedings by Hon. C.K. Kisiangani on September 16, 2021, November 25, 2021, December 23, 2021, March 3, 2022 and Hon. Omondi on November 18, 2021 from the Magistrate’s court in Ruiru Criminal case 1606 of 2021.
 - ii. That the orders made by the Senior Resident Magistrate Hon. C. K. Kisiangani in Criminal Case 1606 of 2021 on March 24, 2022 failing to reinstate the applicant’s cash bail of kshs. 200,000/= be set aside.
 - iii. That the court order the refund of the cash bail of Kenya Shillings 200,000/= initially forfeited to the state in Criminal case No.1606 of 2021 in the Senior Resident Magistrate Court.
 - iv. That this Honourable court do make any other orders it deems fit in the circumstances.



2. It is the applicant's case that she is facing various counts of the charge of personation contrary to section 382(1) of the *Penal Code*. The particulars are that on the 9th day of June 2021 at Githurai 45 within Ruiru Sub-county in Kiambu County, with intent to defraud, falsely represented herself as an employee (sales representative) of M/S Tai Sacco.
3. She pleaded not guilty and was released on a cash bail of kshs. 200,000/= pending trial. She rightfully attended both virtual and physical court sessions save for the court mention of March 1, 2022. The failure to attend the mention was due to the demise of her son on February 6, 2022 and a miscommunication by her then counsel.
4. According to the trial court record, the orders of warrants of arrest and forfeiture of the cash bail were made on March 3, 2022. The trial court faulted the applicant for the failure to attend court on November 18, 2021, November 25, 2021, December 23, 2021, March 1, 2022 and March 3, 2022. From the record, it is not clear what transpired in court as only the quorum and a mention dated are recorded.
5. The applicant made an application before the lower court seeking the lifting of the warrants of arrest and reinstatement of the cash bail.
6. In her ruling the trial magistrate declined to issue an order for reinstatement of the cash bail on the basis that the reasons for non-attendance for trial since November 2021 were not explained. She went ahead to admit the applicant on fresh bail terms of Kshs. 100,000/= on March 24, 2022. That ruling is the subject of the instant application.
7. The state counsel was not opposed to the application and left it to the court to make its determination.
8. The main issue for determination is whether this court ought to issue an order for refund of the cash bail.
9. Section 131 of the *Criminal Procedure Code* sets the procedure of forfeiture of cash bail. It provides that:
 - “ 131.
 - (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.
10. The forfeiture of a cash bail should only be made when a party has been given sufficient time to explain or give reasons why the forfeiture should not be done. The failure to issue the applicant with a notice to show cause infringes on the principles of natural justice.
11. In the instant case, after the applicant presented herself in court the trial magistrate lifted the warrants of arrest and found the reasons given by the applicant as sufficient. There was no justification therefore for the trial court to decline to reinstate the earlier bail terms.



12. This court will not make an order on the production of the virtual proceedings by the trial court on diverse dates between November 18, 2021 and 9th March 2022 as the matter has already been concluded and the applicant paid the fine imposed as opposed to serving the sentence in jail.
13. I have observed that on the above-stated dates, no proceedings were recorded save for the quorum. The court is therefore not informed of what transpired on the said dates.
14. In the circumstances this court orders that:
 - i. The order by the trial court in Ruiru Criminal Case No. 1606 of 2021, failing to reinstate the applicant's cash bail of Kshs. 200,000/= is hereby quashed and set aside.
 - ii. The initial cash bail of Kshs. 200,000/= which was forfeited to the state in Ruiru Criminal Case No. 1606 of 2021 shall forthwith be refunded to the depositor.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU

THIS 30TH DAY OF AUGUST 2023.

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P.M. MULWA

JUDGE

In the presence of:

Duale – court assistant

Mr. Muriuki – for the state/respondent

Ms. Nyaga h/b for Ms. Kamau- for the applicant

