



**Otieno v Republic (Miscellaneous Criminal Application E169 of 2023)  
[2023] KEHC 22818 (KLR) (Crim) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22818 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E169 OF 2023  
DR KAVEDZA, J  
SEPTEMBER 29, 2023**

**BETWEEN**

**JACK OTIENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant filed the notice of motion dated May 17, 2023 pursuant to section 132 of the *Criminal Procedure Code* (cap 75) Laws of Kenya. He prayed that this court lift the warrants of arrest issued against him on February 2, 2023 before the subordinate court. He also prayed that this court reinstates his cash bail of Kshs 300,000 forfeited to the state on April 24, 2023. The application is premised on grounds on the face thereof and reiterated in the supporting affidavit of similar date sworn by the applicant.
2. The averments made are that he is the accused in Milimani Chief Magistrate's Court criminal case No E069 of 2023. On February 2, 2023, he was unwell and did not attend court. However, his advocate on record was present and informed the court of his absence. A warrant of arrest was issued on the said date. On March 9, 2023, he came to court to explain his absence but the court was not sitting. On April 20, 2023, he was detained when he came to court for a routine mention. He maintained that he never left the jurisdiction of the court. Further, he will suffer irreparable loss if the orders sought are not granted.
3. In response, the respondent filed grounds of opposition dated July 10, 2023. The grounds raised are that the applicant has not demonstrated reasonable grounds upon which the court can lift warrants of arrest. The applicant breached the bail terms set by the court hence the forfeiture. The applicant is devoid of merit and should be dismissed.



## Analysis And Determination.

4. I have considered the application, the response, and the applicant's written submissions. The issue for determination is whether the applicant should be granted the revisionary orders sought.

5. The power of this court in its revisionary jurisdiction is founded under section 362 of the Criminal Procedure Code (cap 75) Laws of Kenya which provides that:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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.

6. Article 165(6) of the Constitution provides that:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi-judicial function, but not over a superior court.

7. Consequently, this court has jurisdiction to entertain the application before me. On the merits of the application, I will begin by giving a little background of the case relevant to this application as I glean from the annexed proceedings. The applicant was arraigned before the trial court on January 21, 2022 and after pleading not guilty was granted a cash bail of Kshs 500,000 which was later reviewed to Kshs 300,000 plus one contact person. The trial commenced although witnesses are yet to testify. On February 2, 2023, the applicant was absent and a warrant of arrest was issued. On March 16, 2023, the applicant was still absent and the warrant of arrest was extended. On April 20, 2023, the applicant was present and explained the reasons for his absence.

8. The trial court considered the reasons advanced and forfeited his cash bail *vide* a ruling delivered on April 24, 2023. He granted the applicant fresh bail terms of Kshs 200,000 plus two contact persons. On May 22, 2023, the trial court reviewed the fresh bond terms admitting the applicant to a cash bail of Kshs 100,000 plus two contact persons.

9. The main issue is whether the order of forfeiture of his cash bail was proper. Section 131 of the Criminal Procedure Code sets out the procedure of forfeiture of recognizance and securities, and the factors the court must satisfy itself of before the order of forfeiture is made. That section provides as follows:

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.



- (3) A warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorize the attachment and sale of the movable property belonging to the person without those limits, when endorsed by a magistrate within the local limits of whose jurisdiction the property is found.
- (4) If the penalty is not paid and cannot be recovered by attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment for a term not exceeding six months.
- (5) The court may remit a portion of the penalty mentioned and enforce payment in part only.
- (6) ...”

10. No forfeiture can legally be made before giving an opportunity to the person who will be adversely affected by such order an opportunity to show cause why the forfeiture should not be made. In this case, the order was made after the applicant was given an opportunity to show cause. He was given an opportunity to be heard and give reasons why he absconded court appearances. The order was therefore made in compliance with section 131 of the CPC. It was also in line with the rule of natural justice. The order was regular, procedural, and in the circumstances legal.

11. The upshot of the above analysis is that the notice of motion dated May 17, 2023 is found to be devoid of merit and is dismissed.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 29<sup>TH</sup> DAY OF SEPTEMBER 2023.**

.....

**D. KAVEDZA**

**JUDGE**

**In the presence of:**

Mr Mutuma for the State.

Mr Ayieko for the Applicant.

Habiba C/A

