



REPUBLIC OF KENYA



**Mururu v Republic (Criminal Case 23 of 2017)  
[2023] KEHC 27411 (KLR) (30 November 2023) (Legal Opinion)**

Neutral citation: [2023] KEHC 27411 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE 23 OF 2017  
DO CHEPKWONY, J  
NOVEMBER 30, 2023**

**BETWEEN**

**NATHAN MURIUKI MURURU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**LEGAL OPINION**

1. For determination before this court is the Notice of Motion application dated 26<sup>th</sup> June, 2023 seeking the following orders:-
  - a. Spent.
  - b. That this Honourable Court be pleased to vary, set aside and/or vacate its orders made on 30<sup>th</sup> March, 2022 cancelling the Bond given to the Applicant.
  - c. That upon exparte hearing the orders and directions of this Honourable Court given on 30<sup>th</sup> March, 2022 in respect of the Applicant's bond terms be vacated and set aside.
  - d. That the bond be reinstated.
  - e. That this Honourable Court do make any other orders as it deems fit in the circumstances.
2. The Application is based on the grounds set out on its face and reiterated in the Supporting Affidavit sworn by the Accused as follows:-
  - a. That the Applicant has been involved in a road traffic accident on the 23<sup>rd</sup> February, 2022 and could not manage to attend the mention that was slated on the 9<sup>th</sup> March, 2022 to fix a hearing date as he was still recuperating.
  - b. That the matter was on the 9<sup>th</sup> March, 2022 slated for a further mention on the 30<sup>th</sup> March, 2022 to provide medical documents.



- c. That when the Applicant appeared in court on the 30<sup>th</sup> March, 2022 the bond terms were cancelled and he was remanded since he could not explain his absence on the 9<sup>th</sup> day of March, 2022 when the matter had come for mention to fix hearing date.
  - d. That since the 30<sup>th</sup> day of March, 2022 the Applicant has been detained at Nairobi remand.
  - e. That the Applicant is apprehensive that if the orders given by the court on the 30<sup>th</sup> day March, 2022 are not vacated and the bond reinstated, the Applicant will and continues to suffer irreparable loss and damage as he is still detained and his failure to attend court on the 9<sup>th</sup> day of March, 2022 was beyond his control thereby rendering the filing of the above nugatory.
  - f. That it is against the rules of natural justice to punish a litigant for the mistakes out of his control.
  - g. That the Applicant had given sufficient reasons to this Honourable court to warrant this court to vacate Its given on 30<sup>th</sup> day of March, 2022.
  - h. That this Application is extremely urgent.
  - i. That the application is made in good faith.
3. By way of background, the Accused herein is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. On 4<sup>th</sup> March, 2015, he pleaded “Not Guilty” and was granted bail/bond terms Kshs. 100,000/= with two sureties. Having been released on bond, the accused attended court mentions and hearings on diverse dates as directed by the court.
  4. On 10<sup>th</sup> February, 2021 when the matter came up for mention, the accused person was absent and his Counsel informed court that the Accused was unwell. The court then directed that the Accused to avail evidence of his illness. Failure to which adverse orders would issue. On 14<sup>th</sup> October, 2021, the accused person was also absent and his counsel stated that he had a stomach infection. Similarly, the court directed that medical evidence be availed. On 10<sup>th</sup> November, 2021, the Accused was again absent in court, and his Counsel informed the court that the Accused had filed an Affidavit to confirm he was unwell, which the court indicated was not on the record. The matter was then adjourned, and the court directed the Accused to explain his whereabouts on the next mention date.
  5. On the next mention date of 7<sup>th</sup> December, 2021, while the Accused was present his advocate was absent. The matter was then adjourned to 18<sup>th</sup> January, 2022 on which date the Accused person was absent for the reason that he was having technical hitches. The matter was fixed on 26<sup>th</sup> January, 2022 which date the accused was again absent.
  6. When the matter came up for Mention on 9<sup>th</sup> March, 2022, the accused person was absent. His counsel sought for an adjournment for the reason that the Accused had been injured in a work related accident while at a construction site whereby the court allowed the same and ordered the Accused to avail evidence to confirm the claim.
  7. The matter came up for mention on 30<sup>th</sup> March, 2023, the accused was in attendance and court asked and/or requested that he explains his absence in court for seven times the matter has come up for mentions or hearings, to which the Accused responded that he had had a bacterial infection.
  8. In its ruling, the court noted that it had gone through the documentation handed over it and found he same did not show that the accused had been unwell on the seven occasions he had failed to attend court. She went on to state that the progress of the case had been delayed by the absence of the accused



and she was not convinced on the reasons advanced the absence. The court then proceeded to cancel the bond terms and directed that he be remanded in custody pendency of the case.

9. I wish to point out that as at the time of writing this Ruling the prosecution had not filed any response to the application.
10. The court has read through and considered the grounds upon which the application is premised alongside the Bail Information Report filed in court on 14<sup>th</sup> July, 2023.
11. It is trite law that bail and bond terms issue as a constitutional right but the same is not an automatic right. The purpose of the bond is to ensure that the Accused is freed during the pendency of the trial with an undertaking that he will attend court as and when required.
12. In this case, it is clear that the accused was released on bond terms but from his conduct of absenteeism in court without any proper explanation and or justification. It is also clear that he misused the privilege the court granted on releasing him on bond terms by absconding court on multiple occasions. As correctly stated by Hon. Justice Kasango (as she then was) this court also notes that the reasons given by the accused for failing to attend court on the said occasions are not satisfactory and his failure to attend court caused the delay in having this matter prosecuted expeditiously. The offence is said to have been committed on 12<sup>th</sup> June, 2013, and it is more than ten (10) years ago since. The hearing of the matter has been frustrated by the absence of the accused. Surely litigation must come to an end.
13. The recommendation filed in court indicate that the accused is remorseful for breaching the bail terms and prays that he be granted a second chance. He goes on to state that the accused is not a flight risk and has a supportive social system that will ensure he attends court as and when required. However, it is clear that from the medical report availed that the accused attended court on 23<sup>rd</sup> February, 2022 but he had been absent in January, 2022. Also, there is nothing to show that he was treated for the injuries indicated therein. Further the medical report has been signed by a Procurement Officer and not a doctor.
14. In view of the observations made herein, this court finds that the accused has not advanced any good reason why he failed to adhere to the bond terms granted by court and therefore, the application does not have merit and the same is hereby dismissed. The matter to proceed for hearing and the Accused to remain in custody pending the determination of this trial.

It is so ordered.

**RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 30<sup>TH</sup> DAY OF NOVEMBER , 2023.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Ngesa counsel for the State

M/S Muriithi holding brief for Mr. Njuguna counsel for the accused person

Court Assistant - Martin

