



**Songole v Republic (Miscellaneous Civil Application 59 of 2018)  
[2022] KEHC 10289 (KLR) (24 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 10289 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CIVIL APPLICATION 59 OF 2018**

**WM MUSYOKA, J**

**JUNE 24, 2022**

**BETWEEN**

**WYCLIFFE AKWERI SONGOLE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. On December 20, 2021 I delivered a ruling in which I called for the file in Kakamega CMCRC NO. 54 of 2018, with a view to determining the Motion herein undated, but filed on June 6, 2018, where the applicant was seeking bond pending trial, after the bond earlier granted by the trial court had been withdrawn, after he failed to attend court. He had approached the High Court on the basis that he had evidence that he had a good reason for not being in court on the date the matter was due for hearing.
2. As the issues raised touched on proceedings of the trial court, where adverse orders had been made, this court made orders on March 4, 2019, directing the Deputy Registrar to call for the trial courts records to facilitate determination of the motion before the court. The record reflects that the Deputy Registrar, Hon. J.N. Maragia, had this matter mentioned on April 25, 2019 before her, where she allocated a mention date and made an order that a call letter be issued. Thereafter, the matter was mentioned several times before the Deputy Registrar for the purpose of getting the records of the trial court. The said trial court file was not availed until I delivered my ruling on December 20, 2021, which was too late as the trial in Kakamega CMCCCR No. 54 of 2018 had been completed and the applicant had been convicted on December 20, 2019, and sentenced to serve thirteen years imprisonment.
3. I have closely perused the file before me, Kakamega HCCR Miscellaneous 59 of 2018, and it would appear that the order that I made on March 4, 2019, directing the Deputy Registrar to call for the original trial records, was never extracted, to be placed before the Head of Station and the Chief Magistrate for compliance. I have also not seen a letter in the High Court file from the Deputy



Registrar, calling for the trial records, addressed to the Head of Station and Chief Magistrate as the overall head of the Chief Magistrate's Court's registry.

4. I have equally perused the trial court records. I have not found any evidence that the Deputy Registrar ever communicated the purport of the order of May 4, 2019 to the Chief Magistrate's court, in order for that court to release the file to the High Court for the purpose of the Judge dealing with the motion for bail.
5. In my ruling herein of 20<sup>th</sup> Decembers 2021, I took the view that the Chief Magistrate's court had failed to comply with the order of March 4, 2019, by not releasing the file in Kakamega CMCRC No. 54 of 2018 to the High Court for further action. I have now realized that the problem was not with the Chief Magistrate's court, but the Deputy Registrar. She never brought the order of March 4, 2019 to the attention of the Chief Magistrate's court, for compliance. What she should have done was to have the orders of 4<sup>th</sup> March 2019 formally extracted, and brought to the attention of the Chief Magistrate or the Head of Station for compliance. Instead, she busied herself with having the matter mentioned, while the trial in Kakamega CMCCRC No. 54 of 2021 was going on. It was eventually concluded, rendering the proceedings in this cause useless or otiose.
6. Bail or bond is a constitutional right under article 49(h) of the Constitution of Kenya, 2010. It is a right, that accrues automatically, and the person entitled to it does not need to ask for it or demand it. It is a given. I can only be denied for compelling reasons. In this case it had been granted to the applicant, but it was recalled or withdrawn after he failed to attend court. Recall or withdrawal of bond for failure to attend court or for absconding court is a compelling reason. After the withdrawal, the applicant moved the High Court for redress. He was within his rights to do so. The High Court has jurisdiction, under article 165(6)(7) of the Constitution of Kenya, 2010, to exercise jurisdiction over subordinate courts. By his application herein, the applicant was calling upon the High Court to exercise its supervisory jurisdiction, by revising the decision of the trial court cancelling his bond. No doubt the High Court had jurisdiction to revisit the matter, hence the decision to call for the file. The applicant argued that he had a good reason, that he was unwell, and wanted to place material on record to place that the record before me. In the High Court matter the record, indicates that there could be some truth that he was indeed unwell. When he appeared before Njagi J, on February 20, 2019, the prosecutor, Mr. Ngetich, informed the court that the applicant was not in court as he had been taken to hospital for treatment. That was before I made the order of March 4, 2019, and the trial at the Chief Magistrate's court was still going on. On June 13, 2019, the Deputy Registrar, herself, was informed, by a prisons officer, that the applicant was not in court before her as he was undergoing treatment.
7. So, it would appear that the applicant had an arguable case for reinstatement of bond. But he never got to argue that case before a Judge because the Deputy Registrar failed him. She kept mentioning the matter, while waiting for a court file, that she had not yet called for in the first place. That went on into December 2021, two years after he had been convicted and sentenced, and the cause herein had become spent. The constitutional rights of the applicant were clearly disregarded, and he ended up without remedy, where one was clearly in sight.
8. The other failure by the Deputy Registrar is that, although the order of March 4, 2019 required that the Motion herein be heard inter partes on April 25, 2019, the same was not placed before the Judge on the due date. Instead, the Deputy Registrar had it mentioned before herself, where she directed that a call letter be issued. None was ever issued. It is not clear who she was directing to issue the said letter, given that the order of March 4, 2019 had been specifically directed to her, for her to call for the trial records. The Deputy Registrar never caused the matter to go back to the Judge, if she had difficulty getting the trial records, for further directions from the Judge.



9. As the applicant was seeking to be released on bail pending trial, and that trial has since been concluded, and he is now serving sentence, this cause is now, sadly and regrettably, spent, having been overtaken by events, I have no option but to order the file to be closed. Let a copy of this ruling to be made available to the office of Director of Public Prosecutions at Kakamega, the applicant and Hon. Maragia.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 24<sup>th</sup> DAY OF June 2022**

**WM MUSYOKA**

**JUDGE**

Mr. Erick Zalo, Court Assistant.

Wycliffe Akweri Songole, applicant

Mr. Mwangi, instructed by the Director Public Prosecutions, for the Republic

