



**Republic v Maina & 4 others (Criminal Case 11 of 2020)
[2022] KEHC 11100 (KLR) (5 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11100 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 11 OF 2020
MM KASANGO, J
AUGUST 5, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER IRUNGU MAINA 1ST ACCUSED

ERUSTUS MAINA KIBUI 2ND ACCUSED

ISAIAH MEREU 3RD ACCUSED

JOSEPH MOTOMPA 4TH ACCUSED

DANIEL PARKIRE 5TH ACCUSED

Effect of an accused person absconding court where their surety had deposited security with the court

The 1st accused absconded from attending court before the trial commenced. The court held that in a case where one had offered to stand surety for an accused person it was the duty of the surety to ensure that the accused person turned up in court every time the court required him. The court further held that if the accused did not do it for whatever reason the court had no option but to call upon that surety to forfeit his security.

Reported by Kakai Toili

Criminal Procedure - sureties - effect of an accused person absconding court where he had a surety - circumstance when a surety may forfeit their security deposited in court - what happened to the security deposited by a surety where an accused person absconded court - , Cap 75, section 131.

Brief facts

The 1st accused was charged, alongside four other accused, with the offence of murder. The 1st accused absconded from attending court before the trial commenced and a warrant of arrest was issued. As at the date of the instant ruling, the 1st accused had not been arrested. On July 6, 2021 the court ordered for the arrest of one of the sureties of the 1st accused (the surety). The surety on attending court subsequently was asked



to show cause why the security, he provided to the court, should not be forfeited. The surety was unable to show sufficient cause.

Issues

- i. What was the effect of an accused person who has a surety absconding court?
- ii. What happened to the security deposited by a surety where an accused person absconded court.

Relevant provisions of the Law

, Cap 75

Section 131 - Forfeiture of recognizance

(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.

Held

1. Section 131 of the guided the court where no sufficient cause was not shown by a surety. Not only did the surety fail to show cause why the security should not be forfeited but he also stated he was unable to pay the amount of the surety he provided, Ksh 500,000. During the several attendances by the surety before court, the court reminded him that when he stood surety for the 1st accused, he undertook to ensure the accused attended court when required.
2. In a case where one had offered to stand surety for an accused person it was the duty of the surety to ensure that the accused person turned up in court every time the court required him. If the accused did not do it for whatever reason the court had no option but to call upon that surety to forfeit his security.

The surety forfeited the security he had offered in the instant case.

Orders

- i. *A warrant of attachment and sale was hereby issued in respect to the suit property.*
- ii. *The suit property to be sold by public auction.*
- iii. *A date to be fixed for the matter to be placed before the Deputy Registrar of the court for settlement of terms and condition sale by public auction of that property.*

Citations

Cases

1. Kinyanjui, Stephen Githinji v Republic ((2016) Eklr) — Explained

Statutes

1. Criminal Procedure Code Act (cap 75) — Section 131(1) — Interpreted

Advocates

Mr. Kasyoka for for DPP

RULING

1. Solomon Mwenda Mutegi is one of the two sureties, in this matter, for the 1st accused, peter irungu maina. That accused is charged, alongside four other accused, with the offence of murder. The trial has not commenced.



2. The 1st accused absconded from attending court in this matter on March 3, 2021. On that day a warrant of arrest was issued for that accused. To date the 1st accused has not been arrested. On July 6, 2021 this court ordered for the arrest of the surety Solomon Mwenda Mutegi. That surety was arrested on June 27, 2022 and brought to court. The surety on attending court subsequently was asked to show cause why the security, he provided to the court, should not be forfeited. The surety was unable to show sufficient cause.
3. Section 131 of the *Criminal Procedure Code* guides this court where no sufficient cause is not shown by surety. It is in the following terms:

“Section 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. Not only did the surety fail to show cause why the security should not be forfeited but he also stated he was unable to pay the amount of the surety he provided, Ksh 500,000.
5. During the several attendances by the surety before court I did remind him that when he stood surety for the 1st accused, he undertook to ensure the said accused did attend court when required. This indeed is what the court in the case *Stephen Githinji Kinyanjui v Republic* [2016] eKLR stated, as follows:

“In a case where one has offered to stand surety for an accused person it’s the duty of the surety to ensure that the accused person turns up in court every time the court requires him. If the accused does not do it for whatever reason the court has no option but to call upon that surety to forfeit his security ...”

6. The surety, in view of what is stated above, shall indeed forfeit the security he offered in this case.

Disposition

In the end, there is but only one order to be made which is as follows:-

- a) A warrant of attachment and sale is hereby issued in respect to the property Karingani/Weru/1618.
- (b) The said property Karingani/Weru/1618 shall be sold by public auction.
- (c) A date shall be fixed for the matter to be placed before the Deputy Registrar of this court for settlement of terms and condition sale by public auction of that property.
- (d) Orders accordingly.

RULING DATED and DELIVERED at KIAMBU this 5th day of AUGUST, 2022.



MARY KASANGO

JUDGE

Coram:

Court Assistant: Mourice

Surety: Solomon Mwenda Mutegi- present.

For DPP: Mr. Kasyoka

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE

