



**Republic v Maina & 4 others (Criminal Case 11 of 2020)  
[2022] KEHC 12215 (KLR) (5 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12215 (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 ..... 1<sup>ST</sup> ACCUSED**

**ERUSTUS MAINA KIBUI ..... 2<sup>ND</sup> ACCUSED**

**ISAIAH MEREU ..... 3<sup>RD</sup> ACCUSED**

**JOSEPH MOTOMPA ..... 4<sup>TH</sup> ACCUSED**

**DANIEL PARKIRE ..... 5<sup>TH</sup> ACCUSED**

**RULING**

1. Solomon Mwenda Mutegiis one of the two sureties, in this matter, for the 1<sup>st</sup> accused, Peter Irungu Maina. That accused is charged, alongside four other accused, with the offence of murder. The trial has not commenced.
2. The 1<sup>st</sup> accused absconded from attending court in this matter on 3<sup>rd</sup> of March 2021. On that day a warrant of arrest was issued for that accused. To date the 1<sup>st</sup> 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 1<sup>st</sup> 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.
  7. 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 conditions sale by public auction of that property.
    - d. Orders accordingly.

**RULING DATED AND DELIVERED AT KIAMBU THIS 5<sup>TH</sup> 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**

