



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL REVISION NO. E004 OF 2020

NICHOLUS YEGON.....1ST APPLICANT

ENOCK CHERUIYOT.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. This revision has come to me through a Notice of Motion dated 9th December, 2020 filed by the applicant under Certificate of urgency through the firm of Nyaata & Co. Advocates. The Applicants seek orders:-

- (i) THAT this Application be certified urgent, service be dispensed with thereof and the same be heard ex parte in the first instance.
- (ii) THAT pending the hearing and determination of this Application inter parties, this court be pleased to restore the bail upon the same terms as they had earlier been placed by trial court.
- (iii) THAT the Honourable court be pleased to call for and examine the record of Hon. Magistrate in Bomet Magistrate's Court Criminal Case No. 1021 of 2020 Republic Vs. Nicholus Yegon and Enock Cheruiyot for the purposes of satisfying itself as to the correctness, legality and propriety of the orders of the court issued on 8th December 2020.
- (iv) THAT this Honourable Court issues any other orders that it may deem fit and just to grant.

2. The application is brought on the grounds that the applicants were charged before the Magistrate's Court Bomet with the offence of assault contrary to Section 251 of the Penal Code. That upon taking plea, they were granted bond. That their bond was cancelled when they attended court on 8th December 2020 on the allegation that they had interfered with witnesses.

3. The application is supported by affidavit of Festus Nyaata Mogere advocate for the applicants who in various averments states that the applicants' bail was cancelled by the court on the prosecution's allegation that the applicants had interfered with witnesses. That on 8th December 2020, the court cancelled the Applicants' bail terms and ordered that they be held in custody pending trial. Counsel further averred that the Applicants had been denied their Constitutional right to bail and were undergoing severe hardship. He stated that the Applicants were willing to comply with any reasonable conditions that the court may attach to their restoration of bail.

4. The Criminal Procedure Code vests in the High Court wide powers in its revision jurisdiction. These are contained in Section 362 through to 366 of the Criminal Procedure Code (Cap.75). Section 362 specifically provides as follows:-

"362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying 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".

5. **Section 164** details how the revision jurisdiction should be exercised. It provides as follows:-

"364. (1) in the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High court may

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;

13. I find that the order of the court cancelling the Accused's bond without proof of their alleged interference with witnesses, though lawful and within discretion of the trial court, was made arbitrarily.

14. I set aside the orders of the trial court cancelling the Accused's bond and substitute therefor an order reinstating the bond. For clarity, the Prosecution is at liberty to make any necessary application before the trial court to safeguard the integrity of the criminal process. It is also the jurisdiction of the trial court to consider such application and exercise discretion judiciously.

15. The file is returned to the trial court to proceed with the trial.

16. Orders accordingly.

Ruling delivered dated and signed at Bomet this 28th day of January, 2021.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. Leteipa holding brief for Mr. Nyaata for the Applicants, Mr. Wawire holding brief for Mr. Mureithi for the Respondent, and Kiprotich (Court Assistant).