



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL REVISION NO. E008 OF 2021

HAREN KUMAR DAMJI MANDAVIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Appellant Haren Kumar Damji Mandavia is facing a charge of obtaining by false pretence contrary to Section 313 of the penal code in Mombasa Chief Magistrates Court CR. Case No. 909 of 2019 where he was released on cashbail of Kshs.500,000/=.
2. From the proceedings in the lower court it appears he has other cases before Hon. Nyaloti the Chief Magistrate at Mombasa; he has another case before Makadara Law Courts and Mavoko Law Courts besides the matter before Hon. Ogweno RM in CR. Case No. 909 of 2019.
3. On 30/9/2020 and on 9/11/2020 he was absent and was said to be in Mavoko Court on both occasions. On 12/11/2020 the appellant was again absent and it was alleged he was unwell medical documents presented by the applicant were ordered to be subjected to verification for authenticity.
4. On 14/12/2020 again the applicant was absent and warrant of arrest was issued. On 3/2/2021, applicant was absent and by then medical records had been verified and fresh warrants were issued so applicant could be presented in court. Mr. Magiya Advocate appeared later and claimed that the Applicant had several cases at the Milimani Court and that he had been remanded but didn't give particulars of the case and the court noted that the applicant had not been going to court since 12/11/2020.
5. On 25/2/2021 applicant appeared in court and said he was remanded on 2/2/2021 but again particular of the case for which he was remanded was not availed. The trial Magistrate said the applicant had consistently absented himself from the proceedings. The investigating officer was ordered to file affidavit of verification of the medical report, dated 8/12/2020 and serve on the applicant. The Applicant bond (cashbail was suspended).
6. The applicant was aggrieved by the order suspending his cashbail and applied for revision of the said orders for the reasons that the trial Magistrate failed to ascertain the applicant's health condition before suspending his bond. That the applicant was not given an opportunity to be heard and it was not considered that he was charged with other offences in different jurisdiction that occasioned his non-attendance in court. It was also argued that the dispute before the court was purely of a civil nature and that same was compromised and ready to settle and that charges against the applicant are a continued violation of her constitutional rights.
7. Having perused the trial courts proceedings in CR. Case No. 909 of 2019 it is noted that applicant was arraigned in court on 24th May 2019 and he was released on cashbail of Kshs.500,000/= on 11th December 2019 and subsequently he only attended court once on 20th December 2019.
8. He was absent and explanations were given for his absence and mention dates fixed for him to appear but he didn't appear until the trial Magistrate issued a warrant of arrest on 14/12/2020; 3/2/2021 and on 25/2/2021 the applicant was arraigned in court.
9. From the trial court file there is *prima facie* evidence that Medical documents presented as proof of applicant's illness on 8/12/2020 were a forgery. Apart from Mavoko Magistrates Court CR. Case No. 533 of 2020 there is no other evidence that the applicant was either in Makadara or Milimani courts on the dates when he failed to attend court before the trial Magistrates court in the proceedings herein no particulars of the said cases was given.
10. There is also no evidence that applicant was unwell on any other dates after 8/12/2020 when medical documents were presented on his

behalf. On 25/2/2021 he didn't have any other documents.

11. The High Court under Article 165(3) & (6) of the Constitution has unlimited original jurisdiction in criminal and civil matters (a) as well as jurisdiction to hear appeals (c) and supervisory jurisdiction 165(6) but that jurisdiction is not to micromanage subordinate courts exercising their discretionary powers while adjudicating upon issues before them. The bond/cash bail terms granted to the applicant were given under terms and conditions which if breached warranted the suspension of the bond or forfeiture of cashbail.

12. I have not found reason to interfere with the decision of the trial Magistrate. The matter is pending the filing by the investigating officer of an affidavit to confirm that the Medical documents presented by the applicant were genuine or not genuine. Those documents were presented by the applicant and he cannot be heard to say he was not given an opportunity to explain himself. The documents ought to have spoken for him.

13. The application for revision is dismissed. CR. Case No. 909 of 2019 to be remitted back to the trial court for Mention on 29/3/2021.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 23RD DAY OF MARCH 2021.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:

Court Asst.: E. Ogwel

Mr. Magiya Advocate for the Applicant

Ms. Mwangeka for the Respondent

Hon. Lady Justice A. Ong'injo

23/3/2021