

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei-J

CRIMINAL REVISION NO. E010 OF 2021

HAREN KUMAR MADAVIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Miss Onyiego for the Applicant herein approached this court for orders of revision regarding the lower court's orders made in **Mavoko Principal Magistrate's court criminal case numbers 448, 533, 549 and 557 all of 2020** wherein warrants of arrests, cancellation of bonds and committal to prison remand had been made. It was the applicants case that the trial accused persons had been charged with various offences and that plea had been taken in some of them and that the accused persons were duly released on bond pending trial and that they were unable to attend court on the scheduled dates due to other factors such as attendance of other court cases in other courts, indisposition and self- quarantine due to the Covid-19 pandemic. Learned counsel added that the applicants had moved the **High Court at Machakos vide JR No. 103 of 2020** where orders of stay of the lower court proceedings were issued on the 25.11.2020 pending determination of the substantive Notice of Motion. Learned counsel urged the court to lift the warrants of arrest and reinstatement of cash bail that had been forfeited.

2. Mr. Mwangera learned counsel for the Respondent filed a replying affidavit sworn on 17.2.2021 where he gave a chronology of events right from taking plea to issuance of warrant of arrest and forfeiture of cash bail. It was counsel's contention that the trial court acted diligently and at no point did it violate the rights of the applicants. Counsel also was of the view that the trial court complied with the stay orders by the High Court but exercised due diligence in respect to the applicants conduct before court and that the review herein lacks merit and must be dismissed.

3. Learned counsels presented oral submissions which were a reiteration of the averments in the applicants' letter of complaint and the averments in the replying affidavit.

4. I have considered the applicants request for revision and the respondent's replying affidavit as well as the oral submissions by the learned counsels. It is not in dispute that the applicants had been arraigned before Mavoko Law courts over a range of criminal charges and that the trial court did release the applicants on bond pending trial. It is also not in dispute that the applicants have absconded court appearances which has led to the trial court issuing warrants of arrest and forfeiture of cash bail to the state. It is also not in dispute that the 1st accused herein has since been remanded in custody when he turned up in court and was granted a bond of Kshs 1,000,000/ due to his frequent conduct of absconding court in the past. It is also not in dispute that as of 2.2.2021 the 2nd accused was still at large. It is also not in dispute that the applicants had moved to this court vide **Judicial Review application at Machakos vide number 103 of 2020** and that an order of stay of proceedings of the lower court cases at Mavoko Law Courts was issued on 25.11.2020 pending determination of the Judicial Review application. The issue for determination is whether the request for lifting of warrants of arrest and reinstatement of forfeiture of cash bail is merited.

5. Under section 362 of the Criminal Procedure Code, this court has jurisdiction to call for any record of proceedings before a magistrate's court with a view to ascertaining its correctness, legality or propriety. It has since transpired that this court vide JR No. 103 of 2020 had issued orders of stay of proceedings in Mavoko Law courts criminal cases No.448,533,549,557 all of 2020 pending determination of the said Judicial Review application. The said application is yet to be concluded and hence the trial court was bound to abide by the said orders and to shelve the hearing of the above criminal matters until the conclusion of the same. It is instructive that the trial court is noted to have issued a warrant of arrest and extended the same as well as cancelling the bond and forfeiting the cash bail to the state despite being aware of the existence of the stay orders from the High Court. This was quite irregular and which warrants an order of revision. It is noted that the trial court appears to be upset by the conduct of the applicants in failing to attend the court and that is why it forfeited the cash bail and ordered the applicants to pay fresh cash bails. One can't tell whether the applicants are hiding behind the orders of stay of proceedings but the truth will be established during determination of the judicial review application. If the applicants had absconded court prior to the issuance of the stay orders, then the trial court will deal with the issue once the Judicial Review application is determined. If the application succeeds, then they will be at arm's length from the trial court and if it fails then they will have to subject themselves to the jurisdiction of the trial court and proceed with the criminal proceedings. This is despite the trial court acknowledging the issue of the stay orders from the High Court. Upon the issuance of the orders of stay, it was prudent for the trial court to wait for the determination of the Judicial Review application and thereafter it will proceed to assume jurisdiction and continue with their matters. It is necessary to give room for the disposal of the judicial review application otherwise the same will be rendered nugatory. In order to facilitate the same, it is appropriate to have the orders made by the trial court namely warrants of arrest, forfeiture of cash bail and remanding of the applicants set aside.

6. In the result, I find merit in the applicants' application for revision dated 5.2.2021 and 8.2.2021. The following orders are hereby made:

a) The warrants of arrest and cancellation of bond issued by the Senior Principal Magistrate's Court Mavoko as against the applicants as well as forfeiture of cash bail in Criminal cases 448,533,549 and 557 all of 2020 - Republic Vs Haren Kumar

Mandavia and Somesh Kumar Choudhry are hereby lifted pending the hearing and determination of the substantive judicial review application filed herein.

b) The cash bail forfeited to the state is hereby ordered to be refunded to the rightful depositor upon proof of identification.

c) The orders herein shall apply in Criminal Revision No. E011 of 2021.

d) The Applicants are directed to set down the judicial review application for hearing on priority basis.

It is so ordered.

DATED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF MARCH, 2021.

D. K. KEMEI

JUDGE