



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL REVISION CASE NO. E001 OF 2021

ABIGAEEL CHERONO SOI.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

REVISION RULING

1. The Applicant filed this Revision from Kericho CM. Criminal Case No.1268 of 2019 on the grounds that on 21/12/2020, the prosecution withdrew the case under Section 87 (a) of the Criminal Procedure Code, and issued a warrant of arrest against the Applicant and also forfeited her Cash-Bail.
2. The Applicant ABIGAEEL CHERONO SOI was charged with assault causing actual bodily harm Contrary to Section 251 of the Penal Code.
3. The particulars of the charge were that on 22/10/2018 at Litein Township, the Applicant unlawfully assaulted KELVIN KIPLANGAT thereby occasioning him actual bodily harm.
4. The Applicant learnt of the withdrawal in January, 2021 when she went to inquire the status of her case at the Registry and she has filed this Revision Application for reasons that she was absent when the prosecution withdrew the case under Section 87 (a) of the C.P.C.
5. The Applicant in her letter seeking revision orders stated through her Advocate that she was not aware that the matter had proceeded as a result of the closure of the Court due to the Covid 19 Pandemic.
6. The Applicant stated that she was never informed of the dates for hearing and yet a warrant of arrest was issued and her cash-bail forfeited. The Court finally allowed the withdrawal of the case and ordered that the Warrant of Arrest remains in force.
7. Upon Learning of the withdrawal the Applicant appeared in Court on 25/1/2021 and asked for lifting of the warrant of arrest and cancellation of the forfeiture of Cash Bail but the Court declined hence this Revision Application.
8. During the hearing of the Revision, the prosecution conceded that there is an error apparent on the face of the record.
9. This Court is now being called upon to revise the decision of the Trial Court and to cancel the order for forfeiture of cash bail.
10. This Court has jurisdiction under Article 165 (6) and (7) of the Constitution and also Section 362 of the Criminal Procedure Code to exercise supervisory jurisdiction over the Trial Court.
11. The said provisions have donated power to this Court ***“to 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 to the regularity or any proceedings of any such subordinate court”***.
12. I find that upon halting of Court operations due to the Covid 19 Pandemic, the parties ought to have been served with Notices to appear in Court before any Warrant of Arrest was issued.
13. Ideally, a party requires to be served with notice to show cause why the cash-bail should not be forfeited before forfeiture. Failure to do so is a breach of the rules of natural justice.
14. In the current case, there is no indication that the investigating officer attempted to execute the warrant of arrest before the cash-bail was forfeited.

15. I allow the Revision Application and direct that the warrant of arrest be lifted and the cash bail be refunded to the Applicant. The order for forfeiture of cash bail is accordingly set aside and an order to refund the same to issue.

16. As regards the order to withdraw the case under section 87 (a) of the Criminal Procedure Code. I find that the same is not subject to this Revision Application.

Delivered, signed and dated at Kericho this 16th day of April, 2021.

A. N. ONGERI

JUDGE