



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 65 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

KIBON KIBELION.....ACCUSED

RULING

1. The accused herein failed to turn up in court and a warrant of arrest was issued by this court as well as the deputy registrar. The accused was later arrested and the state prayed that he remains in custody pending the determination of the suit. The court after hearing oral submissions by the parties ordered that the state furnishes the court with a comprehensive affidavit from the investigating officer.
2. The same dated **11th June 2021** has been placed on record sworn by one **Cpl Nyangweh Sylvesters** who deponed that the accused is a flight risk and it only took a warrant of arrest to have him back to court. He said that the accused has been hostile to the deceased family by chasing them away from their land. He attached a copy of a letter from the land adjudication and settlement department Koibatek regarding land parcels number 327.
3. The content of the said letter dated 10th July 2012 indicates that there was a dispute at Waseges adjudication section /530. The said deponent further attached a photo of some land in which there are maize planted allegedly by the accused but on the deceased parcel of land. There is also an OB details from Mogotio police station which indicates that the deceased brother one Michael Chirchir had raised a complain over the accused trespass on the disputed land.
4. For the above reasons which are supported by the documentary evidence, the prosecution prayed that the accused bond be cancelled. That he was a danger to the deceased family and they would be safe if he is held in custody till the case is finalized.
5. Counsel for the accused defended him by stating that he has never been a flight risk and that the failure to attend court was purely because of miscommunication as a result of Covid challenges which militated against the smooth court operations. That the issue of the land was not true and even the extract of the OB was not legible and one cannot understand what was being reported.
6. He submitted that the accused has never failed to attend court and in any case the bail issue was a constitutional right and the accused had given a plausible explanation why he did not turn up in court.
7. The court has perused the proceedings on record and it appears that on 21st September 2020 the accused did not turn up in court. On 9th October 2020 he was present in court and it is evident that the issue of failure to attend court on 21st September was not raised by the parties. The court directed that the submissions be highlighted on 25th January 2021.
8. The matter was mentioned on 10th December 2020 in which the court directed the highlighting of submissions on 8th February 2021. Again there was no evidence that the accused was present or not.
9. On 8th February 2021 the matter was mentioned by the deputy registrar and the accused was absence. A warrant of arrest was issued. On 4th June 2021 the matter went before the deputy registrar and a mentioned date of 7th June 2021 set before this court and this is when the state made the application to have the bond canceled.
10. Its trite law and practice that once bond is granted the accused must always attend court till the matter is determined. The courts past record does not indicate that the accused had failed to attend. It appears that since the advent of Covid 19 pandemic much has taken place and the parties are now expected to attend court virtually. The court takes judicial notice that at times this has disrupted the courts normal procedures.

11. This does not mean that the parties need not comply with the bond terms. They must attend court unless for some special reasons they are unable to which they need to explain or are excused by the court. Having stated so the court record it appears shows that at some point the accused would fail or attend court and there would be no explanation for such failure. The respondent or prosecution seemed to acquiesce as well.

12. Before making a conclusion on this matter the prosecution has asked this court to cancel the accused's bond altogether for the reason that he has interfered with the witnesses and specifically the family of the deceased. The investigating officer has sworn the above cited affidavit to that effect.

13. Whereas it is within the right of the prosecution to challenge the bond and or bail granted to an accused person, which needless to say is not absolute, the reasons given in my view are not cogent and or convincing.

14. First of all, there is no evidence from the complainants and in this case the deceased family to show that the accused has interfered with the use of the land. There is no sworn affidavit or such other incriminating evidence against the accused which this court can prima facie rely on. The only available evidence is the affidavit from the investigating officer which respectfully ought to have been backed up by the complainants, if at all.

15. Secondly the matter is purely civil in nature and this is exemplified by the OB contents which has advised them to seek an injunction against the accused.

16. The said land issue in any case can turn criminal if there is such known offence committed by the accused. Nothing stops the police from protecting the rights of the complainants over the said land should there be any apparent breach of the law.

17. In the premises, a bond being a constitutional right although not limited ought to be granted to an accused person. The bond is hereby reinstated on similar terms. The accused is however granted a last chance not to miss court attendance. The period he has been in custody should be a constant reminder not to fail to attend court.

18. This matter has taken a long time and ought to be finalized as a matter of priority. The same should be fixed for hearing immediately.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 23RD JUNE 2021.

H K CHEMITEI.

JUDGE