



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL REVISION CASE E264 OF 2021**

**MARTIN OMONDI ONYANGOA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

By an application presented to this court by way of the applicant's (martine Omondi Onyango) advocate dated 16.6.2021, the applicant has urged for review of the orders of the trial court in Makadara Criminal Case Number 140 of 2021. The orders aggrieved of related to terms of bond.

Mr. Papai, for the applicant, made submissions that the Honourable Gatheri, Senior Resident Magistrate, had on 11.6.2021 unilaterally altered the terms of bond as set by the Honourable Githinji, Chief Magistrate, who had taken the plea in the applicant's case. That this order altering the terms of bond was made following an application by the prosecution side and in the absence of the applicant. It was lastly, submitted that the applicant risks losing his job as a result of his prolonged incarceration. A plea was made that the aggrieved orders be set aside and the original terms be reinstated.

Mr. Kiragu, appearing for the state, opposed this application on the grounds that there were in fact no alteration of the original orders as no new terms were given. That the terms of bond remain the same but that approval of surety to await the testimony of the minor.

The defence however, maintained that the application for alteration of terms ought to have been made in the presence of the accused.

I have considered the 2 rival submissions of the applicant, and the state Respondent. I have also perused the record of the proceedings in the relevant trial case criminal case No. 140/2021. The same shows that the applicant was first arraigned before the Honourable A. R. Kithinji (Chief Magistrate) on 8.6.2021. upon pleading Not Guilty to the charges the honourable magistrate ordered that he could be released on a bond of Ksh.300,000/= with a surety of a similar amount. Then on 11.6.2021, the came up for surety hearing (approval) before the Hon. L. Gatheru, Senior Resident Magistrate.

Before the surety could be examined the prosecution, applied that the matter be mentioned before the trial court (court 6) for an application to urge the court to suspend the approval of the surety till the minor testifies. The honourable senior resident magistrate accordingly obliged and placed the matter before the trial court for that application. The applicant was not present during this hearing.

Then the matter came up before the HON. E. Kanyiri, Principal Magistrate, for mention on 14.6.2021. The proceedings do not show if the applicant was present. The court only noted the previous orders of 8.6.2021 and 11.6.2021 as above. Apart from fixing the matter for further directions before the trial court and issuing summons to the investigating officer to avail the police file, the Honourable Principal magistrate did not make any orders regarding the terms of bail.

The record of the proceedings therefore do not reflect any alteration of the terms of bond as directed by the Hon. Chief Magistrate (plea court). On 11.6.2021, the prosecution only declared their intention to make an application before the trial court. The court clearly did not make any orders adverse or prejudicial to the applicant, by simply referring the matter to the trial court for the hearing of the bond and surety examination.

Section 362 of the Criminal Procedure Code, states;

***“The High Court may call for and examine the record of any criminal proceedings of a 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”.***

The revisionary powers of this court is therefore pegged on the existence of a finding, sentence or order recorded or passed. No such order as submitted by the applicant has been issued by the courts in this matter. There is therefore no order to be considered for revision by this court.

I accordingly therefore, find the application of the applicant brought by way of written plea dated 16.6.2021 and brought under certificate or urgency, totally lacking in merit. I dismiss the same

**D. O. OGEMBO**

**JUDGE**

**30.7.2021.**

**Court:**

Ruling read out in court (on-line) in the presence of Mr. Papai for the accused, the accused (Nairobi Remand), and Mr. Chebii for the state.

**D. O. OGEMBO**

**JUDGE**

**30.7.2021.**

Court:

The original file to be forwarded back to the trial court (Makadara court) for further action by the parties.

**D. O. OGEMBO**

**JUDGE**

**30.7.2021.**