



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL APPEAL NO.11 OF 2021**

**THOMAS RAGIRA ONGIRO..... APPELLANT**

**VERSUS**

**STATE..... RESPONDENT**

**(Appeal from the decision of Hon. D. Mikoyan-Chief Magistrate Ogembo (C.M) dated 2/6/2021)**

**JUDGMENT**

1. In this appeal the appellant seeks that the Ruling of the Learned Trial Magistrate delivered on the 2/6/2021 be set aside and that the appellants bond as previously given be reinstated.
2. In her oral submissions Miss Mogusu for the appellant submitted that the reasons advanced by the Trial magistrate whilst cancelling the appellant's bond was that there was a threat from the complainant and his witnesses. That reporting disturbance by the appellant is not in any way interference with the case. That the appellant did not take the law in his hands and therefore there is no reason advanced to the court to cancel the bond. That there was no affidavit from the officer of any interference as alleged and the court was wrong in holding that the allegations were true. That the said allegations were from an advocate watching brief and not the prosecution. That the appellant has been faithful in attending court and not missed any of the days he was asked to attend court.
3. Mr. Kaino for the State responded by stating that there was no compelling reason to cancel the bond of the appellant. That if the appellant had threatened the complainant then the matter ought to have been reported to the police station then the appellant's bond could be cancelled. That an affidavit should have been filed to establish the facts. That the State is not opposing the reinstatement of the bond. The appellant can be warned that his bond terms can be cancelled.
4. The court record indicates the trial court cancelled the appellant's bond on the 2/6/2021.
5. In his Ruling the trial Magistrate did not indicate any compelling reasons to have cancel the appellant's bond. In considering whether to cancel bond the trial court must give a hearing to the Prosecution and the accused too. It was upon the prosecution to adduce evidence of interference as alleged. There was no affidavit by the Investigating Officer to demonstrate that the appellant was interfering with the witness or that there was a threat to any of the witnesses.
6. The appellant has a right to bond as provided in our Constitution 2010. The allegations made against him ought to have been properly brought before the court and substantiated.
7. Having noted that the allegations of interference were not tendered before the trial court in my view the trial magistrate erred in cancelling the appellant's bond. I therefore set aside the Ruling delivered on the 2/6/2021 and reinstate the appellant's bond. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KISII THIS 27TH DAY OF JULY 2021**

**R.E. OUGO**

**JUDGE**

**In the presence of:**

**Miss Mogusu**

**For the Appellant**

**Mr. Kaino**

**State Counsel ODP**

**Mr. Orwasa**

**Court Assistant**