



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CRIMINAL REVISION NO E010 OF 2021

SAMUEL KAMAU MWANGI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The Applicant, **Samuel Kamau Mwangi**, is facing sexual offence charges in **Criminal Case No. E032 of 2021: Republic v Samuel Kamau Mwangi** at the Senior Principal Magistrate's Court at Engineer. The charges relate to alleged defilement of and committing an indecent act with a girl aged sixteen (16) years. Upon taking plea in the said case, the Applicant was released on bond pending trial. However, on 30th September, 2021, Hon. D. N. Sure (SRM) cancelled the bond granted to the Applicant stating that there were possibilities that he would stop attending trial since it was clear that parties had been negotiating an out of court settlement.

2. By a Chamber Summons dated 6th October, 2021 brought under **Section 362** and **364** of the **Criminal Procedure Code** the Applicant seeks for review of the ruling delivered on the 30th September, 2021 by Hon. D. N. Sure (SRM) and urges the court to reinstate his bond terms in the trial court.

3. The application is supported by the grounds on the face of it and the Affidavit of the Applicant sworn on even date. He avers that the trial court cancelled his bond terms citing possible interference with the prosecution witnesses and his likelihood to start absconding court sessions. He states that he has never interfered with the prosecution witnesses at all and does not intend to. Rather, that there have been efforts by his parents and those of the complainant to try and solve the matter out of court, efforts that he has not had a hand in at all. He also undertakes to make it his personal responsibility to ensure that his parents do not interfere with the prosecution witnesses.

4. Further, he states that he has never missed any court sessions in the trial court and he has no intention of doing so for any reason whatsoever. In addition, he avers that he lives within Ol Kalou with his parents and also work within the same locality hence he cannot disappear as was alleged by the prosecution. Lastly, he avers that the application has been made without delay.

5. The Respondent did not file a response to the Application.

6. The application was canvassed before the court on 11th November, 2021 by Ms. Kinyanjui Advocate who held brief for Mr. Wainaina for the Applicant whilst Ms. Maingi, learned state counsel appeared for the Respondent.

7. Ms. Kinyanjui submitted that the application is premised on **Article 50** and **49(1) (h)** of the **Constitution** and the **Judiciary Bail and Bond Policy Guidelines**. She reiterated the Applicant's earlier averments and argued that the key witnesses namely the complainant and her mother have already testified hence there is very little chance that the Accused can do to interfere with witnesses. Counsel cited the case of **Martin Mukira v Republic (2017) eKLR** where the court said that in order to cancel an Accused person's bond, the court must be satisfied that there are compelling reasons to deny the accused his/her constitutional right to bond. Ms. Mwangi urged the court to reinstate the bond terms to ensure that the accused's right to a fair hearing is protected.

8. Learned state counsel, Ms. Maingi submitted that she is not opposed to bond reinstatement. She conceded that the trial magistrate rushed into cancelling the bond without making any inquiry on the Applicant's likelihood to abscond and argued that no sufficient information was given to the court to warrant such action. However, she urged the court to issue stringent bond terms so that the Applicant cannot interfere with witnesses.

9. **Section 362** of the **Criminal Procedure Code** which has been invoked by the Applicant empowers 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 or order recorded and the regularity of any proceedings of any such subordinate court. The actions that this court can take when exercising its revisionary jurisdiction is provided for under **Section 364** of the **Criminal Procedure Code** as follows: -

“(1) in the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High court may –

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence: -

(b) in the case of any other order than an order of acquittal, alter or reverse the order.”

10. I have examined the record of the trial court. I note that after taking the evidence of PW1 and PW2, the prosecution made an application for the cancellation of bond on the ground that the Applicant herein and the investigating officer had been interfering with witnesses and that there was a likelihood that he would disappear in view of the same. In the ruling delivered by Hon. D. N. Sure, it is evident that the learned magistrate did not make any inquiry into the credibility or otherwise of the allegations by the prosecution. It was not enough for the court to find that there was a likelihood of the Applicant disappearing in the face of such scanty and unsupported allegations of interference with witnesses by the prosecution which in my view did not amount to compelling reasons. I therefore find that it was wrong for the trial court to cancel the bond terms of the Applicant on account of those allegations only.

11. The upshot is that the Chamber Summons Application dated 6th October, 2021 is merited. Accordingly, I hereby set aside the order of the trial court made on 30th September 2021 and reinstate the bond terms granted earlier. The Applicant is however cautioned not to make contact, whether direct or indirect, in person or through other persons, with the witnesses in the case before the trial court. If any such contact is made and verified, the bond terms shall be cancelled immediately. It is so ordered.

DATED AND DELIVERED AT NAIVASHA THIS 25TH DAY OF NOVEMBER, 2021.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of;

1. Ms.Kinyanjui holding brief for Mr.Wainanina for the Applicant.
2. Ms. Maingi for the Respondent.