



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL REVISION NO. 1 OF 2020

SAMUEL KOILEKEN SAMPASHI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being revision of the ruling and order of Hon. W.A. Juma, CM, delivered on 28th January 2020, in the Chief Magistrate's Court at Narok, in the Criminal Case No. 889 of 2015, Republic v David Sarambashi Sairiraa)

ORDER IN REVISION

1. The applicant has applied for revision of the order of the lower court that ordered him to pay Shs 400,000/= in default to serve 6 months' imprisonment under section 131 of the Criminal Procedure Code (Cap of 75) Laws of Kenya.
2. The application was filed pursuant to the provisions of article 165 (6) of the 2010 Constitution of Kenya, and sections 362, 362, 364 (1) (b) (2) and 365 of the Criminal Procedure Code. The applicant sought the following orders.
 1. *spent.*
 2. an order that the sentence be stayed pending the hearing and determination of the instant application.
 3. an order to vacate the orders sought to be revised.
 4. an order to direct the release of the applicant from custody.
 5. an order to make provision for costs of the application.
3. The application is supported by nine (9) grounds that are set out on the face of the notice of motion. The major grounds are as follows. First, the applicant was sentenced to a fine of shs 400,000/= in default to serve six (6) months imprisonment. Second, the applicant acted as a surety and signed a bond for the accused namely David Sarambashi Sairiraa, in the lower court. Third, the accused failed to attend court and as a result the applicant was sentenced to a fine of shs 400,000/= in default to serve 6 months' imprisonment.
4. Furthermore, the imprisonment of the applicant makes it difficult for the applicant to trace the accused. The applicant is sick and is in need of special attention; as his health will continue to deteriorate while in prison.
5. The applicant is supported by the applicant's 11 paragraphs supporting affidavit. The applicant replicated the same matters that appear on the face of the notice of motion, which I do not need to reproduce herein, except for the following averments. The accused in the lower court disappeared and on several occasions failed to appear in court. The applicant then reported his disappearance to the police, who failed to assist him in tracing him. The applicant has with the assistance of relatives tried to trace the accused but they have not been able to find him. The applicant is a man of limited means and unless the order is revised, he will not be able to pay the fine.
6. The applicant has therefore prayed that he allowed to pay the fine within three months' time.
7. I have perused the ruling that is sought to be revised. As a result, I find that the trial court did not take evidence from the applicant to show what efforts he had made to trace the applicant. His evidence on oath, would have given the prosecution the opportunity to cross examine him in that regard. This was an error of law on the part of the trial court.
8. Instead, the efforts of the applicant to trace the accused were brought to the attention of the court through a statement from the bar by Mr. Onduso, who was his advocate on record.

9. I further find that it was the duty of the applicant to look for the accused.

10. Finally, I find that the applicant is diabetic, a matter in regard to which he has attached medical records from Naramat (Manyatta) Medical, Lab & Dental Clinic in Narok town.

11. After considering all the foregoing matters, I find there is sufficient material to warrant reviewing the subject order, which I hereby do. As a result, the fine to be paid by the applicant is hereby reduced to shs. 200,000/= in default to serve four months' imprisonment.

Order signed, dated and delivered in open court at Narok this 26th day of February, 2020 in the presence of Mr. Onduso for the applicant and Mr. Omwega for the Respondent.

J. M. Bwonwong'a

Judge

26/2/2020