



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**CRIMINAL REVISION NO. 5 OF 2019.**

**ADAMS KIPNG'ETICH TARUS.....APPLICANT**

**VERSUS.**

**REPUBLIC.....RESPONDENT**

**RULING.**

The applicant Adams Kipng'etich Tarus was arraigned in Court in Bungoma Criminal Misc. Case No. 139/2019. By application dated 17<sup>th</sup> May, 2019 the Prosecution stated that the DCIO Bungoma was investigating an offence of obtaining by false pretense and they sought the applicant to be remanded in custody for 14 days to facilitate the Investigations. The applicant opposed the application but pleaded with the court to release him on Cash Bail instead. The trial court after considering the application and sentiments of the applicant released him on Kshs.300,000/= bond with surety of similar amount and directed;

***“The accused to present himself to Bungoma Police Station CID on a daily basis for the next 14 days.”***

On 20.5.2019 M/s Langat Advocate came on record for the applicant. She informed the court that though the applicant had been granted bond with a surety, he has been unable to secure the security by the surety as they had not obtained copy of records in respect of the Motor vehicle the surety intended to use. She prayed that the court for an alternative order of Cash bail and promised that the applicant will;

***“abide by the rules granted by this court and will avail himself whenever required.”***

The state objected to the application and the trial magistrate in Ruling delivered on 20.5.2019 ruled.

In view of the above, the suspect can be released on a bond of Kshs.300,000/= with one surety or a cash bail of Kshs.150,000/=. The suspect is to present himself to Bungoma Police Station on a daily basis for the next 10 days from today. R/A to the high Court.

The applicant the deposited a Cash Bail on 20.5.2019 and was released. He did not report to the DCIO for the next 10 days as ordered. On 30.5.2019 the applicant Cash Bail who forfeited to the state and he was remanded for 7 days to assist the DCIO finalizing Investigations.

The applicant then filed this application dated 4.6.2019 seeking the following orders;

**1. Spent**

**2. That this court be pleased to call file BUNGOMA CR. MISC. APPL. NO. 139 of 2019 and make revision on the orders made on 30/5/2019 by Hon. Githogori – Resident Magistrate to wit:**

**i. The order forfeiting the cash bail of Kshs.150,000/= to the state on 30/5/2019 be reversed.**

**ii. Spent**

**iii. Spent**

**iv. Spent**

**v. Spent.**

The application is premised on the grounds that the trial court dis-regarded the Medical records produced by the applicant; that the applicant

is not a flight risk and that he had not been formally charged and that the complaint against the applicant is Civil in nature and not Criminal.

Mr. Oimbo for state opposed the application the grounds that the forfeiture of Kshs.150,000/= was made after applicant failed to comply with the order which required him to report before the DCIO for 10 days.

From the application and submission by parties, the issue that crystalizes from determination in this application is whether the trial court order of forfeiting the Cash Bail of Kshs.150,000/= to the state on 30.5.2019 was legal.

In this application, certain facts are not contested. (1) That the applicant was released on payment of Cash Bail of Kshs.150,000/=.

***(2) That it was a condition for his release that he would present himself to Bungoma Police Station on a daily basis for next 10 days from 20.5.2019.***

***(3) That the applicant did not report to police for 10 days w.e.f. 20.5.2019.***

From the submissions these are not disputed. The applicant appeared in court on 30.5.2019 when his advocate Mr. Musumba stated that he was unwell and he produced documents from Mama Lucy Hospital to show he was unwell. The learned trial magistrate after hearing both the state and applicant found;

*Further, the suspect went to hospital on 24.5.2019. He had three days between 21/5/2019 and 24.5.2019 to report to Bungoma DCIO to record his statement but he did not despite there being a court order that the suspect had alleged on 17.5.2019 that he is in communication with Nzoia Sugar but no document has ever been brought to court to prove this.*

From the Medical evidence tendered by the applicant he went to hospital on 24.5.2019. He had been ordered to report for 10 days from 20.5.2019. He did not. His explanation that he was unwell was considered by the trial magistrate who found that the document he produced were related to 24.5.2019. He did not explain why he did not report to the police on 21, 22, and 23<sup>rd</sup> May, 2019. The explanation was considered and in my view properly rejected as no explanation was given why he did not report on the 3 days before he was sick on 24.5.2019 for which he produced documents.

The applicant was released on Cash Bail and one of the terms of Cash Bail is an undertaking that in the case of making any default in the condition he was to forfeit the sum of Cash Bail of Kshs.150,000/=. Clearly there was default as he did not report to Police as directed. Having defaulted and given opportunity to explain the default, which explanation was rejected, the sum of Kshs.150,000/= was properly forfeited to state.

In the result this application for revision is rejected.

**Dated and Delivered at BUNGOMA this 25th day of February, 2020.**

**S.N.RIECHI**

**JUDGE**