

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL DIVISION

CRIMINAL REVISION NO.3 OF 2018

(Criminal Case No. 1306 of 2018 of the Chief Magistrate's Court at Nyeri)

REPUBLICAPPLICANT

VERSUS

JOSEPH MUNENE GITHINJI.....RESPONDENT

RULING ON REVISION

1. **JOSEPH MUNENE GITHINJI** was charged with the offence of malicious damage to property contrary to Section 339(1) of the Penal Code as read with Section 339(3)(b) of the Penal Code.
2. A brief outline of the case was that the accused was that was charged with two counts; Count I was that on the 6/11/2018 he unlawfully and willfully destroyed window panes valued at Kshs.7000/- being the property of John Ritho Mwangi; and Count II was being in possession of Narcotic drugs contrary to Section 3(2)(a) of the Narcotic and Psychotropic Substances Control Act;
3. He pleaded Not Guilty to the two counts and was admitted to bail and granted a bond of Kshs.30,000/ with a surety or in the alternative a cash bail of Kshs.25,000/-; on the 6/12/2018 at the instance of the prosecution and with the mother's consent the trial court ordered that the accused be committed to Mathari National Teaching & Referral Hospital for examination and treatment;
4. By an undated letter authored by the accused's mother she requested therein for the trial court to revise her order and instead allow her to take the option of the cash bail to enable her to take the accused for proper medical attention;
5. The trial court then forwarded the case to the High Court for revision vide an Order made on the 24/01/2019 and a letter dated 13th February, 2019.
6. This court has perused the court record and the respective orders made therein; and the undated letter from the mother has also been taken into consideration; as the trial court correctly pointed out it has no powers to revise its own orders;
7. Under Article 49(1) of the Constitution 2010 an accused person has a right to be released on bond or bail on reasonable terms and conditions pending the trial unless there are compelling reasons for him not to be released; in this instance the trial court had admitted the accused to bail and had set out the terms; the prosecution then had his bail terms varied due to his psychiatric condition;
8. Indeed, the accused admits to be suffering from a psychiatric condition for the last six years; the mother now seeks to have the conditions for bail re-instated to enable her to seek proper medical attention for him; but the same notwithstanding this court's considered view is that Article 49(1) is available to any accused person regardless of their mental status; is evident that the trial court acted upon some wrong principle of law in varying his admission to bail due to his mental status and substituting it with an order for committal for examination and treatment at the aforesaid hospital;
9. In the light of the above circumstances this court is satisfied that this is a suitable case for it to exercise its supervisory powers of revision conferred under the provisions of Section 364 of the Criminal Procedure Code;
10. The order for committal at Mathari Teaching & Referral Hospital made on the 6/12/2018 is hereby set aside and the order admitting the accused to bail is hereby reinstated on the same terms and conditions.

Orders accordingly.

Dated, Signed and Delivered at Nyeri this 25th day of February, 2019.

HON. A. MSHILA

JUDGE