

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CRIMINAL APPLICATION NO.199 OF 2018

DAVID OGOLA OUMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, David Ogola Ouma was charged with two others in **Makadara CM's Court Criminal Case No.676 of 2017** with the offence **robbery with violence** contrary to **Section 296(2)** of the **Penal Code**. He was further charged with the offence of **stealing a motor vehicle** contrary to **Section 268(1)** as read with **Section 278(a)** of the **Penal Code**. He was charged with another count of neglect to prevent a felony contrary to **Section 392** of the **Penal Code**. The Appellant pleaded not guilty to the charges. That case is pending hearing before the trial court. The Applicant's application to be released on bail pending trial was granted. He complied with the terms for his release on bail pending trial.

The Applicant was out on bond when he was subsequently thereafter arrested and charged with another offence of robbery with violence contrary to **Section 296(2)** of the **Penal Code**. The case was filed before the **Milimani Chief Magistrate's Court in Criminal Case No.444 of 2018**. The fact that the Applicant was charged in this latter case was brought to the attention of the court in the case before the Makadara Chief Magistrate's Court. The prosecutor applied on 6th April 2018 for the Applicant's bond to be cancelled on account that he had committed another offence while he was out on bond. The court agreed with the prosecution. It suspended the Applicant's bond. The suspension resulted in the Applicant being remanded in custody pending the trial.

The matter would have rested there but for the fact that on 27th June 2018, the prosecution withdrew the charge against the Applicant in the **Criminal Case No.444 of 2018** at Milimani Chief Magistrate's Courts. The charges were withdrawn under **Section 87(a)** of the **Criminal Procedure Code**. In light of this development, the Applicant applied to this court to have the bond that was suspended in the Makadara case reinstated. It is the Applicant's submission that since he had been released on bond, and since he had faithfully attended court before his bond was cancelled, there is no reason why the said bond should not be reinstated. The reason for the cancellation of the bond was no longer in existence since the charge in the Milimani Case had been withdrawn. Mr. Momanyi for the State did not oppose the application.

This court agrees with the Applicant that since the reason for the suspension of his bond in the Makadara Case is no longer in existence, it is only fair and just that the Applicant's bond term be reinstated. For that reason, the order issued by trial court on 6th April 2018 in **Makadara CM's Court Criminal Case No.676 of 2017** suspending the Applicant's bond is hereby revised and set aside under **Section 362** and **364** of the **Criminal Procedure Code**. The Applicant's bond in the case is reinstated on the same terms that were granted by the trial court. The trial court's file is ordered returned to Makadara Chief Magistrate's Court for trial and determination. It is so ordered.

DATED AT NAIROBI THIS 21ST DAY OF FEBRUARY 2019

L. KIMARU

JUDGE