



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 2 OF 2019

ELIJAH NGAYUNI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant by an Amended Notice of Motion dated 26<sup>th</sup> July, 2019 asked the court to be pleased to vary by setting aside the order of the trial court in **Makadara Criminal Case No. 1949 of 2017** disallowing the approval of the surety who is the holder of land property known as **Kajiado/Kaputei/North/98213** and in its place order that the Applicant deposits a surety bond in which the security shall be the said parcel of land.
2. The application is supported by an affidavit of the Applicant sworn on 26<sup>th</sup> July, 2019. The gist of the affidavit and the application is that the trial court unreasonably declined to accept one Stephen Wahome Ngayuni who is the registered owner of the afore stated parcel of land as surety for the Applicant. The said land was initially owned by one Silvia Chebet who subsequently sold it to the current proprietor. That according to the court, the hasty manner in which the transfer was done was suspicious, warranting the dismissal of the surety bond.
3. The application was opposed by the Respondent.
4. The court called for the original trial court record so as to satisfy itself as to the record and correctness of the order given. I have also considered the respective submissions of the parties. The account given by Miss Nyauncho for the Respondent is a true reflection of the proceedings in the trial court proceedings. The ruling disallowing Stephen Nyayuni as the surety is undated but was written by Hon. E. Ominde, C.M, and delivered on her behalf by Hon. Nyaga, CM on 7<sup>th</sup> December, 2018. The reasoning of the learned trial magistrate was that initially in 2018, the land was registered in the name of Sylvia Chebet who offered to stand surety for the Applicant. She was however unable to get a letter of approval from Kenya Prisons Service in Nairobi Remand and Allocation Prison confirming that it was in order for her to stand surety on behalf of an accused person who was in the remand custody in prison. Later in August, 2018 Stephen Wahome Ngayuni whilst using the same title of land presented herself as the surety. He claimed to have bought the land from Sylvia Chebet in the year 2005. But that it was transferred to him in 2018.
5. This far, I agree with the learned State Counsel because in the same year 2018, Sylvia Chebet had presented herself to court offering herself as a surety and as the sole proprietor of the land. At that point, she did not disclose to the court that she had sold the land to Stephen Wahome Ngayuni.
6. Eyebrow is further raised with respect to the valuation report written by Dunhill Africa Valuers on 3<sup>rd</sup> September, 2018. This report was presented by Sylvia Chebet after a valuation that was done on 16<sup>th</sup> April, 2018. Interestingly, when Stephen Ngayuni presented the title in court, the valuation report indicated that a valuation was done on 15<sup>th</sup> March, 2018 at which point the land was registered in his name. Clearly, things did not add up because earlier, he informed the court that he had bought the land in April, 2018 from Sylvia Chebet. Moreover, in the same year in April, Sylvia Chebet had presented the title in court indicating that she was the sole proprietor of the land. Therefore, Stephen wahome as at that date was lying to the court because in March, the land was still in the name of Sylvia Chebet.
7. From the foregoing, I come to the conclusion that the learned trial magistrate did not err in declining to approve Stephen Wahome Ngayuni as the surety or accept the title to **LR No. Kajiado/Kaputei/North/98213** as a security document.
8. Although the ruling of the trial court restricted itself to the issue revolving around the transfer of the land, court cannot shut its eyes to any other circumstance that may raise a doubt on the genuineness of the surety. Even if other matters are not disclosed in the ruling, the fact that Stephen Wahome Ngayuni purported to be the owner of the land at a time when Sylvia Chebet also claimed ownership is sufficient reason to raise a doubt either on the authenticity of the title or the genuineness of the surety himself. It does not matter that the valuation reports were

presented on varied dates. What is in issue is the information on record in them.

9. Again, Stephen Wahome Ngayuni was shown to be the owner of the land on 15<sup>th</sup> March, 2018 whereas as at April, 2018 Sylvia Chebet had claimed ownership. Clearly therefore, there was conflict of interest regarding who between the two was the registered owner of the land.

10. This is a case that the Applicant cannot succeed. He is facing serious charges, amongst them attempted murder. This becomes a solid reason why the trial court must be keen in assessing the surety as a simple mistake could cost the entire trial. I am unable to set aside the order of the learned trial magistrate, Hon. E. Ominde, CM. I accordingly dismiss the application. The Applicant must present a different surety as well as security for approval by the trial court.

**Dated and Delivered at Nairobi This 16<sup>th</sup> day of December, 2019.**

**G.W.NGENYE-MACHARIA**

**JUDGE.**

**In the presence of:**

1. Mr. Kinuthia for the Applicant.
2. Miss Akunja for the Respondent.