

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIMINAL APPLICATION. NO. 58 OF 2017

JAMES MUGAMBI APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

1. On 23rd January, 2012, the applicant was arraigned before the Chief Magistrates Court, Maua with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. It was alleged that on 13th December, 2011 at Nkinyonka Sub-location in Igembe District, he unlawfully assaulted Gerald Mwika thereby occasioning him actual bodily harm.

2. On 14th August, 2017, the applicant applied to this court for stay of proceedings in the ***Maua CMC Cr. No. 222 of 2012, Republic vs. James Mugambi*** and for review of the orders made in the lower court on 26th October, 2016 and 14th June, 2017. He prayed that pending the hearing and determination of that application, he be released on bond. On 21st August, 2107, Chitembwe J granted the applicant cash bail of Kshs. 10,000/- and ordered that the application do come up for directions on 19th September, 2017.

3. On 19th September, 2017, neither the applicant nor his advocate Mr. Nkunja Kaberia turned up. The court forfeited the cash bail and issued a warrant for the arrest of the applicant. The matter came up severally for mention on subsequent dates, to wit, 5th October, 2017, 7th November, 2017 and 22nd January, 2018, but neither the applicant nor his advocate appeared. Then the court directed that the OCS Maua do personally execute the warrant of arrest and produce the applicant in court on 25th January, 2018. That is when the applicant was produced in court under a warrant.

4. The applicant's explanation was that he was admitted at the Methodist Hospital, Maua between 2nd and 27th September, 2017. He produced medical records in support of that contention. That since he did not have any document relating to this case, he did not know the case number; that his advocate refused to communicate with him; that he was in remand until 12th December, 2017; he indicated that he was remorseful and urged for pardon.

5. I have considered the explanation given by the applicant for his non-attendance when he was required to. While I agree that the applicant was admitted in Maua Methodist Hospital between 2nd and 27th September, 2017, I am not satisfied with his explanation as to his whereabouts on the other days and the effort he undertook to establish the terms of his cash bail.

6. The applicants did not tell the court where he was between 27th September, 2017 upto the time he was released from custody on 12th December, 2017. Neither did he tell the court when and why he was placed in custody for him to be released on 12th December, 2017.

7. Further, the applicant did not show any effort he made to know the case number of the High Court under which he was released on cash bail. He only stated that he called his advocate severally who was however, uncooperative. Calling an advocate is not enough. He did not explain why he did not visit his Advocate's offices to inquire about what transpired on 19th September, 2017. His casual explanation is that he called the Advocate on his mobile number.

8. Further, the applicant made only one visit to this court, allegedly on 8th January, 2018 between 27th September, 2017 and 25th January, 2018. To my mind, the applicant did not appear to me to be serious with the matter before court.

9. However, considering the entire record and all that has transpired, I am inclined to give the applicant the benefit of doubt and grant him a second chance. Since the cash bail of KShs.10,000/= that had been paid was forfeited regularly, the applicant may be released on another cash bail of KShs.10,000/=. The matter will now be heard on 22nd February, 2018.

DATED and DELIVERED at MERU this 30th day of January, 2018.

A. MABEYA

JUDGE