

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.6 OF 2018

BERNARD HINGA NJOGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Bernard Hinga Njogu is facing a charge of **defilement** contrary to **Section 8(1)** as read with **Section 8(2)** of the **Sexual Offences Act**. He pleaded not guilty to the charge. The prosecution has already called all its witnesses and closed its case. The trial court is waiting for the parties to file their written submissions on no case to answer. The Applicant had been released on bail pending trial but his bail was cancelled when he failed to attend court. The Applicant's application to have the said bail reinstated by the trial magistrate's court was unsuccessful prompting the Applicant to file the present application before this court.

In his application, the Applicant contends that he did not deliberately fail to attend court but had fallen ill when he was required to appear before court. His explanation in that regard did not favour with the trial magistrate's court which cancelled his bail. The Applicant pleads with the court to reinstate his bail. He gave undertaking to the court that he will attend the remainder of the trial without fail. Ms. Akunja for the State opposed the application. She submitted that the Applicant absconded from court for nearly a year. He did not bother to check on the progress of his case. He kept his advocate in the dark. The Applicant was brought to court after the police had executed a warrant of arrest. She submitted that taking into account the stage the proceedings had reached, it was likely that the Applicant would abscond never to be found if he is released on bail pending the conclusion of the trial. This more so taking into account the Applicant's previous conduct.

This court has carefully considered the Applicant's plea for the reinstatement of the bail that was cancelled by the trial court. As earlier observed in this Ruling, the trial is virtually concluded. The prosecution has closed its case. The Applicant is facing a serious charge which may result in the Applicant serving a long stretch in prison. Since he has already heard the prosecution's case against him, the incentive to abscond is high. This is especially so taking into account the Applicant's previous conduct. This court is not persuaded that the Applicant made a case for this court to reinstate the bond that was cancelled by the trial court. The same was properly cancelled after the Applicant deliberately failed to attend court.

The application therefore lacks merit. It is hereby dismissed. The trial court's file is ordered returned to that court for hearing and conclusion of the trial. The case shall be mentioned on 4th April 2018 before the trial magistrate's court for further orders. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF MARCH 2018

L. KIMARU

JUDGE