

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 659 OF 2018

ARON OBUDHO OCHIENG.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. I have had the advantage of reading though both the original trial court record and the typed proceedings. From the proceedings of 6/4/2018, parties clearly agreed on the steps that would be undertaken in the process of ADR.

2. To be precise, the cash bail in the sum of Kshs. 700,000/= was to be forfeited to the complainant as the final installment after Kshs. 700,000/= had been paid. The settlement was for Kshs. 1,000,000/=. This process took a sharp turn after the applicant lost representation and a misunderstanding cropped up. Also, when the court made an order for forfeiture of the cash bail on 22/5/2018, it had lost sight of the previous proceedings and the agreement between the parties enunciated above. The forfeiture of the cash bail did not only offend the agreed process of reconciliation but also made it impossible for the Applicant to hustle for the much needed cash for restitution. He cannot look for the money when his freedom is curtailed. Even enhancing the bail terms is tantamount to the spirit for which affordable bail was granted in the first instance.

3. I therefore find that the record of proceedings is tainted with an incorrectness which this court under Section 362 and 364 of the Criminal Procedure code has powers to correct.

4. In sum, I set aside the orders of 22/5/218, ordering the forfeiture of the applicant's cash bail of Kshs. 300,000/= and consequently re-admitting him to a cash bail of kshs. 550,000/=. I substitute it with an order that the cash bail of Kshs. 300,000/= is reinstated. Matter shall be mentioned on 5/6/2018 to confirm the progress in Alternative Dispute Resolution or any further directions. The court further orders that cash bail of Kshs. 550,000/= is set aside.

5. It is so ordered.

DATED and DELIVERED this 29th day of May, 2018.

G.W. NGENYE-MACHARIA

JUDGE