



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**MISC. CRIMINAL APPLICATION NO. 22 OF 2018**

**RICHARD OUMA ARONDO....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. This is an application dated 7/06/2018 seeking for review and/setting aside the orders of the Chief Magistrate in Sexual Offences No. 45 of 2016 issued on 5/06/2018 for forfeiture of cash bail of Kshs.80,000/= and/or sentencing the applicant to six (6) months imprisonment.
2. The grounds relied on are that the applicant was acquitted of the charges in the case but ordered to forfeit Kshs.80,000/= cash bail or serve six months imprisonment. It is stated that the counsel for the applicant asked the Chief Magistrate to explain the orders but he declined to do so.
3. The counsel for the applicant followed up the matter in the registry and was informed that the cash bail was forfeited in the year 2013. It is only fair and just that the cash bail having been forfeited, the applicant who has been in remand since 2016 be discharged to avert further injustice.
4. The applicant states that he has been in remand since 2016 as a punishment for failure to attend court. He claims that his constitutional rights are being violated by his continued detention considering that his cash bail was forfeited.
5. The respondent in the replying affidavit of Leah Mati the prosecution counsel, the review of the order of the forfeiture of the cash bail. The release of the applicant from custody was not opposed on the ground that he suffered double jeopardy. It is further stated that the applicant was convicted of the offence of failing to attend court and sentenced to six months imprisonment on 5/06/2018.
6. The respondent states that the Chief Magistrate was right in making the said orders because the applicant having been released on cash bail failed to appear in court on 6/06/2012. There are no justifiable reasons or special circumstances to warrant the setting aside and/review of the orders for forfeiture of cash bail.
7. The parties agreed to rely on their pleadings instead of filing submissions. Mr. Andande represented the applicant while Ms. Mate was for the respondent.
8. I have perused the judgment of Hon. M.N. Gicheru in Sexual Offences No. 45 of 2016. The applicant was acquitted of the offence of gang rape contrary to Section 10 of the Sexual Offence Act on 5/06/2018. The court proceeded to find that the accused did not honour the terms of the bond he executed on 26/07/2016 and that he failed to show cause why the case bail should not be forfeited. The court then ordered that the accused forfeits Kshs.80,000/= and in default serve six months imprisonment. It is this order that aggrieved the applicant and led to the filing of this application.
9. The applicant executed bond of Kshs.100,000/= with a surety on 26/07/2016 with one Titus Maruka Magulu of P.O. Box 3146 0100 Nairobi as his surety. On the 28/02/2017, the applicant absconded court and summons to the surety were later issued directing him to appear on 6/04/2017. On the said date the accused was present in court and the cancellation of his bond was to follow.
10. It was in respect of the absconding by the applicant on 28/02/2017 that Hon. M.N. Gicheru ordered for forfeiture of Kshs.80,000/= or serve six months imprisonment. This order had nothing to do with the cash bail because the applicant had executed a bond with the surety in this case.
11. The record shows that the applicant had earlier been charged in criminal case No. 728 of 2012 jointly with one Ahmed Ali Mayo. The two accused persons were ordered to execute a surety bond of Kshs.200,000/= or deposit cash bail of Kshs.80,000/=. The applicant absconded and the court ordered forfeiture of the cash bail he had deposited vide receipt No. 251788. The forfeiture was done in favour of the Chief Magistrate on 13/07/2012 vide voucher No. 3330 dated 12/04/2013.

12. This application refers to the cash bail of Kshs.80,000/= forfeited on 13/07/2012 in Criminal Case No. 728 of 2012. In that case, the applicant's co-accused went through the trial to conclusion after the applicant absconded. The applicant was arrested in the year 2016 and charged in Sexual Offences No. 45 of 2016. This case was concluded by Hon. M.N. Gicheru on 5/06/2018. This case has nothing to do with the cash bail that was forfeited on 13/07/2012 in the earlier case.

13. I have perused the record and noted that Mr. Victor Andande was appearing for the applicant in Sexual Offences No. 45 of 2016. The counsel who is representing the applicant in this application was well aware of the facts and the history of the two cases involving the applicant. It is surprising that he filed this application which may have been intended to cause confusion that would have led to this court reviewing or setting aside the orders of the chief magistrate which had nothing to do with the cash bail forfeited in the earlier case.

14. The prosecution counsel conceded to part of the orders sought in this application in the honest believe that cash bail had been forfeited in this case and as such the applicant had suffered double jeopardy. This averment in the respondent's replying affidavit was based on wrong information.

15. It is my considered opinion that the orders made by the chief magistrate on 5/06/2018 were in respect of the surety bond executed on 26/07/2016 that the applicant failed to honour.

16. The applicant has failed to establish the grounds relied on in this application to justify review and/setting aside of the orders made on 5/06/2018.

17. I find no merit in this application and dismiss it accordingly.

18. It is hereby so ordered.

**DATED, DELIVERED AND SIGNED AT EMBU THIS 1ST DAY OF AUGUST, 2018.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Ms. Mutegi for Andande for Applicant**

**Ms. Mati for Respondent**