



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISCELLANEOUS CRIMINAL CASE NO. 2 OF 2017

GEOFFREY KIMATHI MEEME.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. **Geoffrey Kimathi Meeme** (hereinafter “the Applicant”) was arraigned before the Meru Chief Magistrate’s Court on 18th November, 2014 with two counts of stealing contrary to **Section 275 of the Penal Code Cap 63 of the Laws of Kenya**. It was alleged that on the 29th August, 2014 at Meru town in Imenti North District within Meru County, the Applicant stole a **cheque leaf No. 1341 valued at KShs.100/=**, the property of **Samuel Maingi Mwangi**. It was also alleged that he stole **KShs.338,541/40** the property of **Equity Bank** between 5th and 16th September, 2014.

2. The Applicant also faced two other charges of making a document without authority contrary to **Section 357 (a) of the Penal Code** and uttering a false document contrary to **Section 303 of the Penal Code**. The Applicant denied all the charges and was released on a cash bail of KShs.100,000/=.

3. On 21st May, 2015 and 1st December, 2015, the matter came up before the trial Court for hearing but was adjourned at the instance of the Applicant who was then unrepresented. He then appointed Mr. Otieno Advocate who appeared on his behalf on 16th February, 2016. On that day, the matter could not proceed as the trial Court was engaged on other official duties. The Accused was present on that day and the matter was adjourned to the 7th July, 2016.

4. There is nothing that was recorded on 7th July, 2016 but on 8th July, 2016, the matter came up but both the Applicant and his Advocate were absent. It was adjourned to 21st July, 2016 when again the Applicant failed to appear and a Warrant of Arrest was issued against him. The matter was adjourned to 25th August, 2016 but once again, neither the Applicant nor his Advocate appeared. On 15th September, 2016, the matter came up again and the Applicant not appearing, the Court forfeited to the State the cash bail of KShs.100,000/= and marked the matter for the last adjournment. On 29th September, 2016, the Applicant failed to appear and the Court ordered that the matter be withdrawn under **Section 87 (a) of the Criminal Procedure Code Cap 75 of the Laws of Kenya (“CPC”)**. In all those days when the Applicant was absent, his Advocate likewise did not appear in Court.

5. On 18th October, 2016, barely three (3) weeks later, the Applicant together with his Advocate appeared before the trial Court and applied that the order of forfeiture be reviewed and be set aside. They explained to the Court the reasons for the Applicant’s absence from Court for the period 8th July, 2016 to 15th September, 2016. The Court held that it lacked jurisdiction to review its order and urged the

Applicant to apply to this Court.

6. In his application dated 27th January, 2017, the Applicant explained that due to a boycott by members of the Law Society of Kenya, following the murder of Willy Kimani, there was breakdown of communication between him and his Advocate; that he tried to get in touch with his Advocate but he was unsuccessful. That before the bail was forfeited, he had religiously attended Court when the prosecution witnesses had failed to attend Court. The Applicant therefore prayed that the order of forfeiture made on 15th September, 2016 be reviewed and bail be refunded to him. At the hearing, the Applicant relied on the grounds set out in his application dated 27th January, 2017 while Mr. Mungai, the Learned Prosecutor left the issue to the Court.

7. The Powers given to this Court for revision is to be found under **Section 362 of the CPC** which provides:-

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

8. From the foregoing, the jurisdiction of revision is exercised for the Court to satisfy itself of the correctness, legality or propriety of any finding sentence or order passed by the lower court. The Applicant has not faulted the trial Court for the order of 15th September, 2016. It is clear from the record that before forfeiting the cash bail, the Applicant had failed to attend court on three (3) previous occasions, to wit, 8th July, 2016, 21st July, 2016 and the 25th August, 2016, respectively. Bail or bond is ordinarily given to an accused to bind him to attend Court when required for the trial of his case. Once an accused fails to appear on the appointed date, the court giving bond or bail has the jurisdiction to cancel the bond or forfeit the cash bail. This is what happened in the present case. The trial court did not know the whereabouts of the Applicant on three (3) occasions before it exercised its power of forfeiture.

9. The Applicant explained that the earlier hearing date was 7th July, 2016 and not the 8th July, 2016 when the matter came up. It is true that the 7th July, 2016 was the date when the matter was first fixed for hearing. However, the Court did not forfeit the cash bail either on 8th July, 2016 when the matter came up for hearing or 21st July or 25th August, 2016 when the matter subsequently came up. The power of forfeiture was withheld for over two (2) months during which time the Applicant had the opportunity to go to Court and seek to know the position regarding his case. He would also have gone to the offices of his Advocate for advise. This, he failed to. To this Court's mind, if it be true that the Applicant was true to his bond with the Court, he would have sought to know from either the Court itself or the registry about his case during that period. He has not even shown that he made any effort to know or confirm the position of the case. It is also not true that he had previously religiously attended Court when the prosecution witnesses failed to attend. That is being economical with the truth as the record shows that on two (2) occasions, the case could not take off because he was not ready to proceed.

10. It is a wonder that is unexplained how the Applicant and his Advocate were swift to seek the refund of the cash bail only shortly after the case was withdrawn under **Section 87 (1) of the CPC**. The only irresistible inference is that, the Applicant may have known about the warrant for his arrest and only resurfaced after the case had collapsed due to his own absence. Can the Court reward the Applicant for his own wrong? I do not think so. That will be a mockery of justice.

11. In any event, since the lower court case was withdrawn, the order of refund of the forfeited cash bail cannot be made post withdrawal. It could have legally been made if that case was still pending. Probably, the Applicant should have first applied to reinstate the case altogether before seeking the refund of the cash bail.

12. In view of the foregoing, I find no good reason to review the order of the trial Court.

It is so ordered.

DATED AND DELIVERED AT MERU THIS 29TH DAY OF MARCH, 2016.

A. MABEYA

JUDGE

29/3/2016