



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CRIMINAL CASE NO. 10 OF 2013**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**HENRY NJERU MUGO.....1ST ACCUSED**

**DAVID KINYUA MINJIRE.....2ND ACCUSED**

**RULING**

1. This is an application dated 27/03/2017 by Ngondi Macera the surety of the 2<sup>nd</sup> accused David Kinyua Minjire seeking for orders for release of his title deed for L.R. No. Kyeni/Kigumo/ 7135 held in the court registry. He also seeks for discharge from being the surety of the accused who is now at large.
2. In the supporting affidavit, the applicant states that he stood surety for the 2<sup>nd</sup> accused for a bond of Shs.100,000/= and deposited his title deed as a surety. After sometime the accused brought the title deed to the surety at home. The applicant did not understand how the document was released to the accused by the court registry.
3. The applicant was later summoned to the registry due to the mysterious disappearance of the security. He surrendered the title deed to the in-charge of the registry. The accused denied before the Deputy Registrar that he is the one who took the title deed to the applicant.
4. The Deputy Registrar on application by the applicant released him from the responsibility as a surety. The 2<sup>nd</sup> accused was still on bond and was to abscond later. The matter was referred to the District Criminal Investigation Officer (DCIO) who recorded statement.
5. The prosecution obtained a warrant of arrest against the accused but were not successful in executing it. The case against him was withdrawn under Section 87(a) of the Criminal Procedure Code. This case is still pending.
6. At the time the Deputy Registrar discharged surety, the 2<sup>nd</sup> accused was supposed to be remanded in custody pending replacement surety. Without any explanation, the surety was discharged and the accused left free. The trend of attendance in court prior to the absconding was that he was present this time and absent the next date. This was the period the DR was mentioning the matter in an attempt to sort out the issue of surety.
7. The applicant was charged with stealing the title deed in CM Criminal case No. 493 of 2016 and the charges rejected by the court under Section 89(a) of the Criminal Procedure Code thereby discharging him. The magistrate rightly predicted that the case was poorly investigated since the culprits who released the title from the registry to the end accused had not been charged.
8. With the foregoing history, the court would continue holding the title deed of the surety in vain. Returning it to the court registry was an act of good faith since he could not understand how it was released to the accused to bring it to him.
9. I therefore allow the application in terms of prayer 2.
10. It is hereby so ordered.

**DATED, DELIVERED AND SIGNED AT EMBU THIS 2ND DAY OF AUGUST, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Ms. Ndorongo for the surety/applicant**