



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL REVISION NO. 22 OF 2016

BENSON MUGAMBI MUTHEE APPLICANT

Versus

REPUBLIC RESPONDENT

RULING

1. BENSON MUGAMBI MUTHEE is facing before the Nanyuki Chief Magistrate's Court under file **Criminal Case No. 146 of 2016**, a charge of **stealing a motor vehicle contrary to section 278 A of the Penal Code**. This is the second file opened after he absconded trial on the first file. The offence is stated in the particulars of the charge to have occurred on 18th March 2012. Benson sought before the lower court he be granted bail pending trial. The lower court by its well-reasoned ruling delivered on 4th March 2016 declined to grant bail. Benson has referred that refusal to bail before this court seeking this court to revise the lower court's decision.

2. It is important to understand what informed the lower court's ruling on Benson's application for bail. As stated before the offence is alleged to have occurred in March 2012. Benson, alongside others, was arrested and arraigned before the Nanyuki Chief Magistrate's Court under **Criminal Case No. 512 of 2012**. In that Criminal case file Benson was granted bail pending appeal. The security provided as required by the court's bail terms was a title deed. Benson absconded from his trial. As a result the case against him was withdrawn under **section 87(a) of the Criminal Procedure Code**. The title deed that had been provided as security of Benson's bail pending trial, after investigation, was found to have been stolen from those titles held by Nkubu Law Courts. The investigation of that alleged theft is still on going.

3. Benson was arrested in February 2016 in Mombasa and fresh charges under **Criminal Case No. 146 of 2016** were laid before court for which the trial court denied him bail pending trial.

4. Before the lower court the investigating officer filed an affidavit which detailed how Benson on absconding from the trial of his case could not be traced. That he was finally traced at Changamwe area in Mombasa and arrested on 6th February 2016. The investigating officer described Benson as flight risk.

5. Benson filed before the lower court a replying affidavit replying to the investigating officer's affidavit. He stated that he is a family man and his family resides in Gitimbine Estate in Meru. That when he was arrested he was in Mombasa looking for employment after he was informed the complainant withdrew charges against him. He denied he was flight risk.

6. In his submissions before this court however, Benson contradicted himself on what he had deponed in his replying affidavit before the lower court. He stated that he was employed as a driver. He drove a vehicle for his employer to South Sudan. The vehicle had an accident which detained him in South Sudan. While he was away he learnt the person who stood surety for him and who presented the title deed, said to have been stolen in Nkubu, went into hiding. He denied knowledge that the title was stolen. He further stated that while he was away he requested his aunt and father in law to keep the complainant informed. He stated that he was arrested in Mombasa while he was on his way to Nanyuki. He apologized for having failed to attend court for trial.

7. Learned counsel Mr. Tanui the Principal Prosecution counsel opposed the applicant's application. Learned counsel after narrating how Benson absconded his trial and did not return until his recent arrest submitted that it was clear indication that he does not deserve bond. He sought that the court will deny the application for revision.

8. The power of this court to consider this matter is found in **Section 123(3)** of the **Criminal Procedure Code Cap 75**. Any interference with the trial court's decision however ought to be exercised judiciously. **Article 49(I)(h)** of the constitution provides that release on bail is a right of an arrested person. That article however places some limit to that right, that bail can be denied where there are compelling reasons. The court in a case before the High Court at Kerugoya that is, **REPUBLIC V HARRISON NJUE NJOGU CRIMINAL CASE NO. 9 OF 2015** held that a compelling reason would be such a reason that is forcefully convincing to persuade the court to believe that something is true. In the case **REPUBLIC V DANSON MUGUNYA & ANOTHER Mombasa Criminal case No. 26 of 2008** the court stated that it did not matter what the accused person was charged with when considering a bail application. What the court stated was paramount to consider was whether the accused would avail himself when called upon to do so.

9. It is I think the holding of the latter case that persuades me to find that Benson's application cannot be granted. He absconded his trial in the year 2012 and when he was before the trial court after his re-arrest gave one reason why he was absent and before this court gave a different reason. I am in total agreement with trial court's ruling. Benson is a flight risk and for that reason his application for revision of the trial court's refusal to grant him bail pending trial is rejected. **It is dismissed.**

DATED AND DELIVERED THIS 31ST DAY OF MAY 2016

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue

Benson Mugambi Muthee

For State:

COURT

Ruling read in open court.

MARY KASANGO

JUDGE