

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL MISC APPLICATION NO. 17 OF 2016

NICASIO MWANGI KIURA..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

1. The application was brought under certificate of urgency and was certified as such. In their notice of motion, counsel for the applicant advanced a number of grounds in support of his application for reinstatement of the applicant's bail/bond following its cancellation by the trial court for non attendance. According to counsel, the applicant was prevented from attending court by circumstances beyond his control namely the travel restrictions imposed upon him by the South Sudan Police who were investigating a case involving the applicant and one Henry Mwangi Agugi.

2. According to the affidavit of counsel for the applicant, the police of the South Sudan government ordered that the applicant should not travel out of Sudan until the case was fully investigated and permission to travel given to him by the prosecutor Attorney General of that country. This is what prevented the applicant from attending court as ordered.

3. In his supporting affidavit, counsel has also stated that the trial court had no good grounds to disbelieve the explanation of the applicant for his non attendance in court.

4. The state did not oppose the applicant's application.

5. I believe the affidavit evidence of the applicant's counsel namely that the applicant was prevented from attending court by virtue of the travel restrictions imposed by the South Sudan government. This was beyond the control of the applicant. The trial court was not entitled to cancel the bail/bond of the applicant. The applicant had offered a satisfactory explanation for his non attendance in court.

6. In the circumstances, I find that the cancellation of his bail/bond was not justified. The order of the trial court cancelling the bail/bond of the applicant is hereby set aside. The applicant is hereby restored to his original bail/bond terms.

7. I hereby order that the bail/bond of the applicant be restored.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **15th** day of **JUNE 2016**

In the presence of Ms Muriuki for the Applicant and Ms. Mbae for the Respondent

Court clerk Njue

J.M. BWONWONGA

JUDGE

15.06.16