

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.163 OF 2016

JOSPAT KARIUKI KARIUKI.....
APPLICANT

VERSUS

REPUBLIC.....RESPOND
ENT

RULING

The Applicant, Josphat Kariuki Kariuki is facing a charge of **obtaining by false pretences** contrary to **Section 313** of the **Penal Code**. He has been charged before the Makadara Chief Magistrate's Court in **Criminal Case No.940 of 2014**. When the Applicant was arraigned before the said court, he pleaded not guilty to the charge. He was released on a cash bail of Kshs.50,000/-. The Applicant however absconded from court. His bail was cancelled. The cash bail was forfeited. A warrant of arrest was issued. He was later arrested on an unrelated matter and brought to court. The Applicant has applied to this court to set aside the order cancelling his bail or in the alternative direct that he be refunded the cash bail now that he is in remand custody awaiting his trial. The Applicant explained that he failed to attend court due to the fact that he fell ill and was at the time being medically attended to. He pleaded with the court to restore his bail due to his medical condition. He stated that his medical condition requires specialized treatment and can only be properly managed while he is out on bail. He promised to abide by any terms that the court may impose to secure his attendance before court. The Applicant reiterated the contents of his application in the oral submission that he made before court.

The application was vehemently opposed by the prosecution. Ms. Aluda for the prosecution submitted that the Applicant should not be released on bail pending trial because he had twice absconded from court without any apparent reason or justification. The trial court had indulged him the first time that he failed to attend court but subsequently thereafter cancelled his bond when he again failed to attend court. In her view, the forfeiture of the cash bail was justified. She submitted that the Applicant frustrated the hearing of the case when he failed to appear before the court on four occasions. In the circumstances therefore, this court cannot exercise its discretion in the Applicant's favour when clearly he has shown that he cannot be trusted to attend court if released on bail pending trial.

This court has carefully considered the rival arguments made in this application. It is clear from the record of the court that the Applicant, without any justifiable reason failed to attend the trial court when he was required so to do. Although the Applicant claims that he was sick at the time and therefore was unable to attend court due to his medical condition that explanation does not hold because the Applicant was not prevented by his alleged illness from communicating to court either through an agent or in writing for his failure to attend court to be noted. The main reason why an accused person is released on bail pending trial is on condition that he attends court on the date that the case is scheduled for trial. In the present application, it was clear that the Applicant breached the terms of his bail by failing to attend court, not on one occasion, but on several occasions. The Applicant's plea for this court to restore his cash bail therefore cannot be granted because, from his past conduct, this court cannot trust that he will attend court if he is so released on bail pending trial.

In the premises therefore, the Applicant's application cannot therefore be allowed. The cash bail was legally forfeited. The Applicant will remain in remand custody pending his trial. His application is

dismissed. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF JULY 2016

L. KIMARU

JUDGE