



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO.229 OF 2016**

**NICHOLAS ONYANGO KAWICHO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Nicholas Onyango Kawicho is facing charges of **conspiracy to commit a felony** contrary to **Section 393** of the **Penal Code** and **attempted stealing** contrary to **Section 268(1)** as read with **Section 389** of the **Penal Code**. The Applicant pleaded not guilty to the charges. The trial is ongoing before the magistrate's court. Soon after taking plea, the Applicant was released on bail pending trial. However, due to the fact that the Applicant absconded from court, his bond was cancelled. The Applicant has now made an application before this court seeking to have the bond that was earlier issued to him reinstated. In his application, the Applicant explained that he failed to attend court due to illness. He stated that at the time he was expected to be in court, he was admitted in hospital with a chronic chest infection. He emphasized that he had not deliberately failed to attend court. He was still ailing and required constant medical attention and medication which cannot be provided by the Prison authorities. He therefore urged the court to reinstate his bond so that he may receive proper medical attention.

Ms. Kimiri for the State opposed the application. She submitted that the Applicant absconded from court without any lawful excuse. He did not attend court until he was arrested by the police who were executing a warrant of arrest. She stated that the Applicant was a flight risk and should not be released on bail pending trial. She was of the view that the explanation given by the Applicant for his failure to attend court was an afterthought meant to bolster his application. She was of the view that the Applicant had made no case for this court to reinstate the bond that was cancelled.

This court has carefully considered the arguments made before this court. The main reason why an accused person is released on bail pending trial is on the understanding that he will appear before court during trial. In the present application, it was clear that the Applicant did not honour the condition for his release on bail pending trial. He was supposed to present himself to court without fail during trial. The Applicant explained that he did not attend court because of the medical condition that he was suffering from. This medical condition required hospitalization. The Applicant did not however tell the court why he did not communicate to court and explain his failure to attend court on the scheduled hearing dates. The reason advanced by the Applicant for failing to attend court would have gained sympathy with this court if the Applicant had presented himself before court after hospitalization. That was not the case here. The Applicant did not attend court until he was brought to court on a warrant of arrest issued by the court. It is clear to this court that the argument advanced by the prosecution to the effect that the Applicant is a flight risk is not without merit. The complaint by the Applicant that he has a medical condition that requires specialized medical treatment which cannot be provided for by the Prison authorities is not supported by evidence. The Applicant himself told the court that whenever he required specialized treatment, he has been escorted to Kenyatta National Hospital for treatment. Clearly, his medical condition can be managed while he is in remand custody.

The upshot of the above reason is that the application made by the Applicant lacks merit and is hereby dismissed. He shall remain in custody pending his trial. The trial court properly cancelled the bond that was earlier granted to the Applicant. It is so ordered.

**DATED AT NAIROBI THIS 28<sup>TH</sup> DAY OF JULY 2016**

**L. KIMARU**

**JUDGE**