

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.176 OF 2016

JOHNFRED MWANGI

NDWIGA.....APPLICANT

VERSUS

REPUBLIC.....

.....RESPONDENT

RULING

The Applicant, Johnfred Mwangi Ndwiga is facing trial before the magistrate's court. He has been charged with four (4) counts under the **Penal Code**. When he took plea, he denied the charges and was released on bond pending trial. However, the Applicant only attended court once. He thereafter absconded from court. A warrant of arrest was issued. He was arrested a year later after allegedly committing another criminal offence. To conceal his identity, the Applicant used an *alias*. His true identity was however established. He was taken before the trial court. The bond that he had earlier been granted was cancelled. The trial court directed that the Applicant remains in custody pending the trial of his case.

The Applicant was aggrieved by this decision and has applied to this court to release him on bail pending trial. He has explained that the reason for his absence from court was due to the fact that he had gone to South Sudan for business but due to political situation in that country, he was unable to return in time to attend court. He stated that he was arrested in South Sudan and was remanded in custody for seven (7) months before he was released. He pleaded to the court to take into consideration that he has been in remand custody for nearly two years while awaiting trial. He conceded that he was facing another charge of **robbery with violence** contrary to **Section 296(2)** of the **Penal Code**. He urged the court to exercise its discretion and grant him bail pending trial. Ms. Kimiri for the State opposed the application. She explained that the trial court was justified in cancelling the bond as evidenced by the proceedings. She urged the court to use its discretion in the matter and establish whether the Applicant is entitled to be released on bail pending trial.

This court has carefully considered the rival submission made by the parties to this application. The issue for determination by this court is whether the Applicant has made a case for this court to revise the order made by the trial court cancelling his bond. From the record of the trial court, it was clear that the Applicant absconded from court soon after plea was taken. He did not appear in court until a year later when he was arrested having allegedly committed another offence. The trial of the other offence is pending before court. The Applicant explains that he was unable to attend court due to circumstances beyond his control. He states that he was detained in South Sudan for a period of seven (7) months which prevented him from attending court. The Applicant was unable to give a satisfactory explanation why he failed to inform his surety, who happens to be his father in-law, of his whereabouts so that he could inform the court.

This court has perused the proceedings of the trial court. It was clear that when he was summoned to attend court, he was unable to tell the court where the Applicant was. The Applicant's story would have resonated with the court if upon his alleged release from detention in South Sudan, he immediately registered his presence before the trial court. The Applicant did not do this. Rather, he was arrested for allegedly committing another offence before he was brought before the trial court to answer the present charges. It was clear to this court that the Applicant did not voluntarily surrender to the court. It was

evident that the Applicant, with a view to avoiding facing trial, used an *alias* when he was arrested to conceal from the court the fact that he had absconded from court.

The main reason why the court has the discretion to release an accused person on bond pending trial is to secure the attendance of such accused person to court during trial. That is the main consideration that the court takes into account in determining whether or not to release an accused person on bail pending trial. In the present application, it was clear that the trial court properly exercised its discretion in cancelling the bond issued to the Applicant because of his deliberate failure to attend court after he had been released on bail pending trial. The Applicant did not give a satisfactory explanation of why he failed to attend court for a period of one (1) year. It was clear to this court that if the Applicant had not been arrested for an unrelated offence, his presence in court would not have been secured.

For the above reasons, this court finds no merit with the Applicant's application to be released on bail pending trial. His application is hereby dismissed. He shall remain in custody pending the trial of his case before the magistrate's court. The trial file shall be returned to the magistrate's court. It is so ordered.

DATED AT NAIROBI THIS 26TH DAY OF JULY 2016

L. KIMARU

JUDGE