



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
MISC. CRIMINAL APPL. NO. 314 of 2016

ELIJAH NGARUNI KARIUKI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant filed a substituted Chamber Summons on 21st September, 2016 asking for orders that the criminal case No. 152 of 2016 at Mavoko Law Courts in which he is the accused be heard in public. During the hearing of the application, the Applicant notified the court that the trial magistrate, Hon. P.O. Ooko had refused to approve the surety he had presented to secure his bond. In that regard, he was asking that the Deputy Registrar of this court approve the surety instead of the learned trial magistrate. He was also requesting that the said learned trial magistrate disqualify himself from the case because of the manner in which he had handled the bond approval process.

He did not submit on the request made that the hearing be conducted in public. Be that as it may, it is important to point out that the court had earlier in a separate file granted a request by the Witness Protection Agency to have a witness in the trial heard in camera. So far, no justification has been put forth to warrant a revision of that order.

Back to the issue of bond approval, the Applicant was of the view that the learned trial magistrate was unnecessarily refusing to approve the surety whom he had presented to secure his release. The issue became so protracted between the Applicant and the trial magistrate culminating in the ruling dated 6th October, 2016 in which the learned trial magistrate recused himself from further handling the matter. When the Applicant came to court, he gave an impression that the surety he had presented to the court was his first line aunt whose residence was known and his consanguinity relationship with him was obvious. This court through the learned State Counsel handling this case, Miss Kimiri requested that the learned trial magistrate give reasons why he had declined to approve the surety. My direction was premised on the fact that bail before trial is a constitutional right and should not be withheld unless there are compelling reasons. At the time, the only document that was availed by the Applicant was a report on the surety, one, Beatrice Wanjiku Muiruri by the Investigating Officer in which the latter had found the surety as unsuitable. This was based on the ground that her known permanent residence was unknown. But the court on seeing this report was not convinced that the content in the report founded good reasons why the surety should not have been approved. The court noted that the proposed surety being a close relative of the Applicant could be able to vouch on his attendance to court.

However, when the court was furnished with the ruling of the learned magistrate Hon. P.O. Ooko,

Principal Magistrate dated 6th October, 2016, a different scenario was presented. The said ruling clearly depicts the proposed surety as untrustworthy person who kept lying to the court. When she initially presented herself to the magistrate, it was apparent that she did not know the basic vital information about the Applicant. She told the court that the Applicant was her nephew and a military officer. She was confronted by the court that the Applicant amongst other charges was accused of impersonating and uttering documents to one PC Paul Mutinda as a person duly employed in the Kenya Defence Forces. She then retracted her statement and told the court that she did not know the Applicant's job occupation. On that ground, the court declined to approve her security documents.

On 23rd August, 2016, the Applicant again requested the court to re-assess the surety. By this time, the report of the investigating officer dated the same day had been filed in the court. It was read over to the Applicant. The surety who was in court on listening to the content of the letter informed the court that she had in fact not given a true reflection of what she had told the court on 15th August, 2016 when she was first assessed. She accordingly asked for the Court's forgiveness. Of noteworthy is the fact that she had lied that she knew where the Applicant lived. She had said that he lived in Athi River next to Portland Cement Company House No. 8 but which the Investigating Officer found out was a house that had long been vacated and a new tenant was in occupation. Furthermore, the surety had indicated that she lived in Murang'a whereas it was clear that she had relocated to Machakos. When she was pestered by the court to state why she did not disclose her current residence, she instead asked for forgiveness. The court pardoned her on account of her advanced age.

From the chronology of events, the learned trial magistrate dully informed the Applicant that the surety could not be approved. It is clear that Applicant gave a misrepresentation of what had transpired in the trial court. He gave a picture that depicted the magistrate as a person who was blatantly violating his constitutional right to bail. From the brief background I have given it is trite that the said surety Beatrice Wanjiku Muiruri is not an honest person who can be trusted to avail the Applicant in court if he absconded. She lied on basic but vital information about the Applicant that is required in tracking him if he absconded. She was presented by the Applicant as a surety on the basis that she was his close relative. Having admitted that she lied to the court, demonstrated that she gave false information which would aid the Applicant to abscond the court without a trace by police. I would in the same measure hold as the learned trial magistrate that the said Beatrice Wanjiku Muiruri is not a suitable surety.

It is an unfortunate event that led to the learned magistrate recusing himself from the trial. Be that as it may, my view is that the said learned magistrate properly declined to approve the surety based on the false information presented to him by the surety. In the circumstances, this court declines to direct that the Deputy Registrar of this court approves the said surety. The Applicant shall secure another surety who shall present himself/herself to the current trial magistrate for assessment. The prayer that Hon. P.O. Ooko recuses himself from the trial is already overtaken by events. It is so ordered.

DATED AND DELIVERED ON 31ST OCTOBER, 2016

G.W. NGENYE-MACHARIA

JUDGE

In the presence of;

- 1. Applicant present in person*
- 2. Mr. Ongige for the Respondent.*

