

IN THE HIGH COURT OF KENYA

AT NAKURU

REVISION NO. 1 OF 2015

MOSES MAKAU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION ORDER

This matter has been brought before the High Court for review based on a letter written by No.43580, PC Moses Makau seeking review of the orders made by the learned Resident Magistrate on 14/1/2015. I have called for and perused the proceedings in CMCC No.163/2014, **R. Vs Vincent Engehere Jaika**. The issue involved was the lack of police file. During the trial on 22/12/2014, the court prosecutor indicated that he did not have a police file. The court issued a warrant of arrest for the Investigating Officer and directed that the matter be mentioned on 12/1/2015. On 12/1/2015, the record shows that again the court prosecutor indicated that he had no police file. The trial court then issued a warrant of arrest against the OCS, Nakuru to be executed by the OCPD and directed that the matter be mentioned on 21/1/2015. Before that date on 14/1/2015, the matter came up before the trial court. On that day the Investigating Officer, PC, Makau was present in court with the police file. He explained to court why the file had not been availed on the earlier dates. The trial magistrate rejected that explanation and slapped the Investigating Officer with a fine of Kshs.5,000/- with no default sentence. While it is true that the Investigating Officer has a duty to avail the police file in court on hearing dates, I find that in this matter the trial magistrate may have acted a bit precipitately. The matter was due to be mentioned on 21/1/2015, for the warrant of arrest to be effected. Before this date, on 14/1/2015, the Investigating Officer did appear in court together with the police file.

I have perused the summons issued to the Investigating Officer and I note that it is dated 15/12/2014 and directed him to appear in court on 14/1/2015. The Investigating Officer did appear in court on 14/1/2015 in obedience to the summons. The Investigating Officer gave a reasonable explanation for the failure to avail the police file. In the circumstances, his explanation ought to have been sufficient. If the court required documents to prove his illness then the court ought to have allowed the officer a chance to avail such proof. Given that on 14/1/2015 the police file was availed as ordered and in the absence of proof of any deliberate, malicious or intentional acts by the Investigating Officer to derail and/or delay the trial, I feel that the Kshs.5,000/- fine was unwarranted. The trial court ought to have accepted the explanation given by the Investigating Officer. I note that the fine has already been paid and receipted for. The Investigating Officer has been released from the cells. In the circumstances no further action is warranted.

MAUREEN A. ODERO

JUDGE

15/1/2015