

REPUBLIC OF KENYA

IN HIGH COURT OF KENYA AT MERU

CRIMINAL REVISION NO. 115 OF 2015

REPUBLIC.....PROSECUTOR

VRS

IBRAHIM MURSAL MOHAMMED..... ACCUSED

REVIEW ORDER UNDER SECTION 363 AND 364 OF THE CPC

This file has been placed before me for purposes of review of the orders of SRM Sogomo, Moyale Court in CRC 12/2015 whereby on 24/6/2015, the surety in the case, one Edin Omar Kala was ordered to deposit KShs.500, 000/= in court as per the bond terms and he was ordered to be released on his own bond because the accused had jumped bond. The matter was slated to be mentioned on 10/7/2015.

From the record, it is not clear whether the surety is held in custody or has been released on bond. The accused in this case is said to have absconded. The surety came to court under summons on 24/6/2015. He asked for time to get the accused. Although he had been given 30 days, the Investigation Officer, Mr. Daniel Owuor claimed to have seen the accused together with the surety at the said court on that day. The surety denied that fact. I think the fact that the surety was believed to be lying to court about the whereabouts of the accused prompted the trial magistrate to act as he did by ordering the surety to be locked up in remand.

When accused absconds, in a case where there is a surety, the court must proceed under Section 131 of the CPC. The surety should have been allowed time to trace the accused and if he did not find him, show cause why the security could not be forfeited.

Under Section 131 (2) of CPC, if sufficient cause is not shown and penalty is not paid, the court may then proceed to recover the security by issuing of warrants of attachment and sale of surety's moveable property. There is no provision that the surety be released on bond or be kept in remand. If the court was of the view that the surety perjured the court, he should have proceeded under the relevant provision of the law to recommend that he be charged with perjury.

In the premises, if the surety is in remand, I direct that he be released forthwith and the court allow him time to produce the accused in court. The court should bear in mind that, when considering whether or not bond should be granted, the primary consideration is whether the accused will turn up for his trial and the duty of the surety is therefore, to ensure that the accused turns up for trial.

I further direct that if the surety does not produce accused after the time that the court will allow him, then the court can invoke Section 131 of CPC.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 27TH DAY OF JULY, 2015.

R.P.V. WENDOH

JUDGE