



**REPUBLIC OF KENYA**

**High Court at Nyeri**

**Revision Case 5 of 2013**

**REPUBLIC.....PROSECUTOR**

**Versus**

**MOSES RIMUI NJOROGE .....ACCUSED**

**REVISION**

1. This matter has been referred to this court for revision under sections 364(1)b(2) and section 365 of the Criminal Procedure Code in respect of the decision by the Chief Magistrate to cancel the surety of the accused in CMC criminal Case No. 1050/12.
2. It is stated that the circumstances leading to the cancellation of the said surety are that the accused was set for hearing of his case on the 30th day of April 2013 but failed to attend court nor did his surety one JORAM NJOROGE and since no explanation was given the court issued a warrant of arrest.
3. It is stated that the accused had been arrested on 29th April 2013 and held up at Juja police station. He was subsequently arraigned at Thika Chief Magistrate's court case No. 1212 of 2013 on 2nd May 2013 and managed to raise the bond terms on 7th day of May 2013.
4. The surety and the accused came to court on 14th May 2013 when the court was requested to lift the warrant of arrest instead the court canceled the surety and placed the accused in custody.
5. I have looked at the proceedings before the Chief Magistrate and note that the accused was able to explain his absence from court on day when the matter was supposed to proceed for hearing supported by documents evidence which have not been challenged.
6. I have also noted that the surety appeared before court in person and has also sworn an affidavit in which he confirms that he is still willing to stand surety for the accused.
7. I note that it is the duty of an accused person to attend court and the surety is only called upon to ensure his attendance and since the parties herein have explained failure of the accused to attend court on that date I am of the considered view that the trial court should not have canceled the surety.
8. I therefore reverse the order of the Chief Magistrate issued on 23rd May 2013 canceling the surety and hereby reinstate the same.
9. The accused should therefore be released from custody upon the bond terms earlier given.

Dated and issued at Nyeri this 24th day of May 2013.

**J. WAKIAGA**

**JUDGE**