

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

REVISION NO. 8 OF 2013

ISAAC KIPLANGAT MUTAI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION

The Applicant is charged before the lower court with offence of defilement contrary to Section 8(1) as read with Section 8(4) of the Sexual Offences Act, 2006 (*No. 3 of 2006*). He was granted a cash bail of Shs 100,000/=.

The Applicant attended court dutifully as the prosecution has to date called 3 witnesses, and the next hearing was scheduled for 15.05.2013. Unfortunately for the accused the court had moved its sitting from court No. 5, opposite the Central Police Station which the Applicant knew and attended on 15.05.2013 not knowing that the trial magistrate hearing the case had moved to the Municipal Court. When his case was called at the Municipal Court and neither him nor his Advocate appeared, the court believing that the applicant had “*jumped bail*” issued an order for a warrant for his arrest and also for forfeiture of his cash bail, and fixed the case for hearing on 10.06.2013.

The Applicant appeared before court on 10/06/2013 and though the warrant of arrest was lifted, he was informed by the trial court that his cash bail had been forfeited to the State and was ordered to deposit a new cash bail of shs 150,000/= and a surety of shs 200,000/=. His Advocate has termed these orders as manifestly unjust, and has by letter of 11.06.2013 asked this court to revise those orders.

The application for revision raises two related issues; the cancellation of the bond and forfeiture of the cash bail.

On the first issue, Section 124 of the Criminal Procedure Code (*Cap. 75, Laws of Kenya*) empowers the court to order the issue a warrant of arrest where an accused person who has been granted bail/bond fails to attend court on the date and time appointed by the court. It is a cardinal principle of the grant of bail, that an accused will attend court on the time and day appointed. It is therefore a serious breach of that condition not turn up for hearing or mention of the accused's case. The order of arrest was therefore proper.

On the second issue, the order of forfeiture of the cash bail, it is the requirement of Section 131 of the Criminal Procedure Code that the court will first make an inquiry of the accused or his surety to show cause why his recognizance should not be forfeited. The order forfeiting his cash bail cannot therefore be made simultaneously with the order cancelling the bail/bond. The accused as well as the surety is required to be granted opportunity, to a hearing, to show cause why his bail/bond should not be forfeited to the State. Failure to do so is a grave breach of the rules of natural justice.

I therefore set aside the orders of forfeiture without due process, of the cash bail of Ksh 100,000/= and the further order for Sh 150,000/= and sh 200,000/= surety as being manifestly unjust. I direct that the cash bail of shs 100,000/= paid by the accused be restored to the credit of the accused, and he be granted bail on the said basis of sh 100,000/= cash bail.

I do not find that the accused would be in any way prejudiced by the continuation of the trial before the same court. I therefore direct that the file be forwarded to the learned trial magistrate to continue

from where the trial had reached.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 18th day of June, 2013

M. J. ANYARA EMUKULE

JUDGE