



REPUBLIC OF KENYA

High Court at Kericho

Criminal Revision 180 of 2012

REPUBLICAPPLICANT

VERSUS

LAWRENCE GITAU GATHUKA1ST RESPONDENT

ROSE CHEPNGENO RONO2ND RESPONDENT

REVISION

This case has been referred to me pursuant to the provisions of **Section 363** of the **Criminal Procedure Code**. The Hon. V.W. Wandera, Chief Magistrate having perused the record of proceedings therein was of the opinion that an order made by Hon. J.R. Ndururi, Principal Magistrate was illegal hence sought to have it revised.

I have perused the court record. The accused, Lawrence Gitau Gathuka was charged in Criminal Case No. 829/2011 with an offence of robbery with violence contrary to **Section 296(2)** of the Penal Code.

An application was made to have him released on bond. In her considered ruling Hon. Ongudi, Chief Magistrate (*As she then was*) declined to grant the order sought. She concluded in her ruling by stating as follows:-

“... I therefore decline to grant the orders sought by the defence for bail/bond. Accused is at liberty to move to the High Court if dissatisfied”.

The case was later consolidated with another one whereby the accused was jointly charged with one Rose Chepngeno Rono hence this proceedings.

On the 6th December, 2011, an application was made to have the accuseds released on bond. Hon. S. N. Andriessen the presiding magistrate then, having perused Criminal Case No. 829/11 declined to grant bail.

When the matter was placed before Hon. J.N. Ndururi, Principal Magistrate the application for bail was renewed. The court considered the application and reviewed the order by granting the accuseds bond.

In denying the applicant bail Hon. Ongudi, Chief Magistrate (*As she then was*) gave reasons that she considered compelling enough to have the accuseds' freedom curtailed. She found that:-

- (1) The accused Lawrence Gitau Gathuka was facing another case of robbery with violence before the Senior Principal Magistrate's Court, Narok.
- (2) The accuseds security was at stake.
- (3) The accused being a police officer was amenable to being in possession of a gun.

The order of the learned Magistrate was appealable to the High Court. A Principal Magistrate could not purport to vary such an order as he is not seized of appellate jurisdiction.

For this reason the order made by the learned Magistrate is illegal. I therefore exercise my discretion under **Section 364** of the **Criminal Procedure Code** by reversing it. The order dated 6th December, 2011 by Hon. S.N. Andriessen shall subsist.

It is so ordered.

LILIAN N. MUTENDE
JUDGE
22/11/12