



REPUBLIC OF KENYA

HIGH COURT AT NAKURU

MISCELLANEOUS CRIMINAL APPLICATION 80 OF 2009

HENRY KIBUI MWANIKI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Unless a suspect is charged with an offence punishable by death and cannot be tried within a reasonable time, he shall be released on such reasonable conditions as may in the opinion of the court ensure that he attends his trial.

The applicant in the instant matter was charged in the court below with four (4) counts of issuing bad cheques contrary to section 316A (1) (a) of the Penal Code. He pleaded not guilty on 19<sup>th</sup> December, 2008.

On various dates, his case has been set down for hearing but on each of those occasions he has failed to attend court and the court has had to issue and cancel warrants of arrest several times. The last warrant of arrest was issued on 17<sup>th</sup> June, 2009 and is the subject of this application. Before the warrant could be executed the applicant took himself to court. The court, in its detailed and balanced ruling found that the applicant had *Misc. Cr. Appl.No.80/09* abused the terms of the bond and proceeded to cancel it. In doing so the court said:

***“It is quite obvious from the foregoing that there is a pattern of abscondment (sic) he accused. No other interpretation or conclusion can be drawn from these abecedets (sic)***

***I have come to the conclusion that the accused is hell-bent to frustrate and derail the trial.....The accused simply gave himself French leave to be away from his trial. I am yet to see this kind of impunity”***

The frustration in the language set out above is understandable. I have myself counted five (5) different days when the matter had to be adjourned on account of non-attendance by the applicant and sometimes even his counsel. Justice cuts both sides. The complainants in the case and their witnesses, just like the applicant, are entitled to a speedy trial.

The learned magistrate in the court below was quite in order in taking the action he took. It is noted, however that the applicant has been in custody since 24<sup>th</sup> June, 2009 when his bond was cancelled. In my estimation, the *Misc. Cr. Appl. No.80/09* applicant has learnt one lesson; that a court is an institution which must be taken seriously.

The applicant is facing bailable offences and this application is not opposed by the respondent. Pursuant to the provisions of section 123(3) of the Criminal Procedure Code, it is ordered that the applicant shall be released on execution of a fresh bond of Kshs.500,000/= with a surety other than the original one.

Dated and Delivered at Nakuru this 25<sup>th</sup> day of September, 2009.

W. OUKO

JUDGE