



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Revision 2 of 2008

MUTAI REUBEN..... APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

I: Background

1. Two brothers were alleged to have been growing Cannabis Sativa, an addictive drug, on their land. When the law enforcement officers being the Chief and district officer visited the site, the two brothers ran away. Later one brother called Japhet Kipkurui Rotich was arrested on 24th October, 2003 and apprehended to Court on 27th October, 2003.
2. He denied the charge and claimed it was his brother who was concerned. A plea of not guilty was entered. The said accused was released on bail of kshs. 100,000/= with one surety.
3. One Mutai Reuben alias Reuben Kipngetich Mutai a teacher by profession and a neighbour to the accused stood surety for the accused.
4. The trial for the accused then commenced on 15th January, 2004. All the prosecution witnesses gave evidence. On the date adjourned for a ruling as to whether there was a case to answer or not the accused failed to attend court. A warrant of arrest was first issued on 14th December, 2004. The accused was not tried until 21st October, 2005.
5. His surety in the meantime never appeared to court nor was able to give an explanation of the accused absence and his own on 2nd August, 2005 the surety's salary with the Teachers Service Commission was deducted being a total of Kshs. 100,000/=.
6. The accused was rearrested on 21st October, 2005. His trial commenced and as the same saw the original trial magistrate no longer available to hear the case it was taken over by another trial magistrate.
7. The trial magistrate acquitted the accused. He nonetheless declined to reverse orders made in August, 2005 for the forfeiture of the said sum to the state of Kshs. 100,000/= as the surety sum.
8. The surety witness to court seeking revision orders.

II: Procedure

9. I have outlined the procedure in Revision matters in the misc. application case of 12/2008 **Lochab Brothers Ltd**

v

Republic

10. The applicant wrote a letter. This is the correct procedure save that such letter be addressed to the Registrar who calls up the lower court file and opens a revision file that is placed before the Hon. Judge. No parties appears before the Hon. Judge unless the judge so orders to clarify certain matters not clear.

III: Opinion

11. In this matter the issue is only one. Whether the applicant is entitled to a refund of the surety sum of Kshs. 100,000/= deducted from his salary.

12. It's trite in the law, the task of the court is to see whether the subordinate court conducted the trial illegally and or unprocedurally. This does not arise now as the issue is of the surety.

13. Thus, in this case, whether the forfeiture of the surety sum of Kshs. 100,000/= was unprocedural.

14. The accused failed to appear to court for almost 1½ years. It was only when the surety's sum of moneys was forfeited that the accused appeared to court arrested. At all times the said surety never appeared to court to explain the whereabouts of the accused. His explanation in his letter was that he was in and out of hospital. This explanation was never given to the court at the subordinate level that nor was there any medical letters or documents and nor report from a Doctor showing that the surety was ailing and or in hospital "*in and out*"

15. The procedure undertaken by the courts was correct. Where a surety stands bond for an accused, if that accused fails to attend court the surety is to forfeit the bond that he stood surety for.

16. I am of the opinion that no irregularity has been found in the process of the forfeiture of the sum of Kshs. 100,000/= as bond.

17. I therefore dismiss this revision as having no basis.

DATED this 15th day of December, 2008 at KERICHO

M.A. ANG'AWA

JUDGE

Advocate – Nil.