



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**(CORAM: OJWANG, J.)**

**MISC. CRIMINAL APPLICATION NO. 673 OF 2007**

**ABDIAZIZ HAJI MOHAMMED..... APPLICANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING ON REVISION**

Learned counsel **Mr. Mochache** has presented before this Court the applicant's Chamber Summons filed on 21<sup>st</sup> September, 2007.

The applicant moved the Court to proceed by virtue of ss.362, 364, 365, 366 and 367 of the Criminal Procedure Code (Cap.75), and to review orders of the Principal Magistrate, in relation to Criminal Case No. 50 of 2006, made on 21<sup>st</sup> March, 2007 and on 22<sup>nd</sup> May, 2007.

The question is as regards forfeiture of Kshs.100,000/= which had been paid into Court as bail, to secure the release of the applicant during the pendency of trial.

To the application for revision, the applicant's supporting affidavit is attached, together with an annexure in the form of the proceedings of the Court which has, in the past, dealt with the question of bail.

Learned counsel, **Mr. Mochache**, has contested the forfeiture of bail on two main grounds – one factual, and the other legal.

The factual one is that it is the Court itself, in the shape of its clerical officer, which created a mix-up in date-indications on the bond document, and this confused the applicant, rendering it impossible for him to know the correct date for appearance in Court.

Since that point is not contested, I take it that the relevant deposition is factual, and ought to be accepted by this Court.

There is concurrence, too, on the legal point in support of the applicant's case. Section 131 of the Criminal Procedure Code (Cap.75) requires the Court to call upon an accused person to show cause, before bail is declared forfeit. It is common ground here, as is deponed by the applicant, that the said opportunity was not provided, before the applicant's bail was forfeited.

On this state of fact, it is clear that justice requires that the Kshs.100,000/= bail which had been paid into Court by the applicant, be reinstated.

Consequently, I hereby allow the application aforementioned, and specifically order as follows:

1. The Magistrate's Court orders, in relation to Criminal Case No. 50 of 2006, of 21<sup>st</sup> March, 2007, are set aside.
2. I hereby set aside the orders of 22<sup>nd</sup> May, 2007 and reinstate the applicant's cash bail of Kshs.100,000/=.
3. Consequently, I hereby order that any fresh bail that may have been paid by the applicant, over and above the original cash bail of Kshs.100,000/=, shall be refunded to the applicant.

***Orders accordingly.***

**DATED and DELIVERED at Nairobi this 30th day of October, 2007.**

**J.B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court Clerk: Mr. Huka**

**For the Applicant: Mr. Mochache**

**For the Respondent: Mr. Makura**