



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**Criminal Revision 11 of 2005**

REPUBLIC.....RESPONDENT

VERSUS

1. PATRICK WAFULA KATI )

2. JENIPHER NABAMALA SIMIYU ).....  
.....APPLICANTS

**RULING ON REVISION.**

The Deputy Registrar of this Court placed before this Court the proceedings in respect of Bungoma S.P.M. Cr. Case No. 301 of 2005 between the Republic and Patrick Wafula Kati and Jenipher Nabamala Simiyu.

I have exercised my discretion pursuant to the provisions of Section 362 of the Criminal Procedure Code to peruse the record of the trial court in this matter. My perusal reveals that the accused persons pleaded not guilty before the Principal Magistrate on the 7th day of February, 2005 to a charge of affray contrary to Section 92 of the Penal Code. They were each released on a cash bail of Kshs.5,000/=. It would appear from the record that the second accused, Jenipher Nabamala Simiyu did not raise the amount and on the 7th day of March, 2005 she was released on a personal bond of Kshs.20,000/=.

The record shows that a hearing date was fixed for 11th July, 2005. when the case came up for mention before Mr. S.G. Sogomo, the learned Resident Magistrate on 3rd May, 2005, the 2nd accused, Jenipher Nabamala changed her plea. She pleaded guilty to the charge and the learned Resident Magistrate proceeded to convict and discharged her under Section 35 of the penal code.

The record further shows that the 1st accused, Patrick Wafula Kati for some unexplained reasons failed to appear before the trial Resident Magistrate on 3rd May, 2005. This prompted the learned Resident Magistrate to issue a warrant of arrest against the 1st accused. He also ordered for the cash bail to be forfeited.

It is clear from the record that the learned Resident Magistrate did not give the first accused a chance to be heard before making an order for forfeiture of the cash bail. This was against the spirit of section 131 of the Criminal Procedure Code. Before making an order of forfeiture a trial court must give a hearing to the accused. In so doing the court will be acting judicially in doing justice.

I have come to the conclusion that the order of forfeiture of the cash bail was issued without following the due process of law. It was therefore issued irregularly. The order for forfeiture of the cash bail is consequently set aside and the 1st accused is directed to present himself before any other Magistrate other than Mr. S.G. Sogomo (R.M) to show cause why the cash bail should not be forfeited. I will not interfere with the findings and decision made in respect of the 2nd accused, Jenipher Nabamala Simiyu in view of the provisions of Sec. 364 (2) of the Criminal Procedure Code.

**Dated and delivered this 13th day of July, 2005.**

**J.K. SERGON**

**JUDGE.**