

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL REVISION NO.37 OF 2002

WILSON KIPROTICH CHEPKAIROR SHOLLEIAPPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

The applicant who was represented by Mr. Kiptanui brought an application seeking its review of orders made by the Chief Magistrate Nairobi one Boaz Olao wherein the said Chief Magistrate ordered the forfeiture of Ksh.150,000/= to the state on 26th November 2001. The applicant was a surety for a an accused person who was charged under Cr. Case No.2056/2001. He had executed a security for Ksh.200,000/= After the accused disappeared the applicant was ordered to forfeit the accused of surety which was reduced to Ksh.150,000/=.

According to Mr. Kiptanui it should have been established on oath that the accused person had absconded by the state. He argues that this is the required of S.131 (2) of the Criminal Procedure Code. He has argued that it was not correct to allege that the accused had absconded after which an order of forfeiture was made.

Miss Nyamosi did not agree with Mr. Kiptanui. She did not agree with the authority cited by Mr. Kiptanui as support of the matter and sought to distinguish the same. N I have perused the case of **Nsubuga vs. Uganda 1969 E.A. 10** which applicant's Counsel cited. The circumstances prevailing in this case are different from the circumstances existing at the time the authority cited was decided. In this particular case the accused has never appeared to date. The prosecution was forced to withdraw the case against him as submitted by Mr. Kiptanui. If the accused had appeared and challenged the forfeiture orders in good grounds then the forfeiture order could be challenged.

Miss Nyamosi correctly submitted that the disappearance of the accused was brought to the attention of the court by the present surety. There was no need for the state to comply with S.130 (1) of the Criminal Procedure Code as was the case in the cited authority. Cording to the record it is the surety who volunteered to pay cash to the court and only asked for leniency. It is therefore an afterthought for the same surety to come forward and claim that it was the court that ordered him to pay up the surety.

In a case where one has offered to stand surety for an accused person it's the surety duty to ensure that the accused turns up in court every time the court requires him. If the accused does not do it for whatever reason the court has no option but to call upon that surety to forfeit his security. The surety has an Duty of ensuring that he knows the whereabouts of the accused person at all times and to ensure that he turns up when required by the court. It is sureties duty to report to the court and apply to withdraw as surety if he has any good reasons to suspect that the accused person is planning to abscond. The court is duty bound to cancel the accused's bond if it is satisfied that the surety is telling the truth. Since the surety did not indicate to the court that the accused was likely to abscond and given the fact he let the surety leave his jurisdiction without his knowledge, then the surety had no op0tion but to forfeit his surety. I am satisfied that the trial magistrate acted rightly in forfeiting the surety. N I am not satisfied that Mr. Kiptanui has established any good grounds to enable me to review Mr. Olao's order. I dismiss this application accordingly.

R.M. MUTITU

JUDGE

17/2/2003

Delivered in open court ;in the presence of

Mr. Kiptanui for applicant and in the presence of

Mr. Kuhya for state.

R.M. MUTITU

JUDGE

17/2/2003