

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPLICATION NO.155 OF 2003

MICHAEL MUOKI Alias MBUVI G. KIOKO..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

The applicant one Michael Muoki Alias Mbuvi Kioko through Mr. Ndungu made an application before this Court seeking an order that the warrant of arrest issued against him in certain mentioned Court cases be lifted and that the warrants in those cases be returned unexecuted. The cases for which the application relates are mentioned as Criminal cases No.1584/00, 8655/00, 6884/01, 8888/02 all in Kibera Law Courts. This application was consolidated with MISC. Criminal application No.170/03. The application is supported by the applicant's affidavit dated 28th February 2003. Mr. Monda appeared for the state.

The applicant has admitted that he failed to attend Kibera Court in each of the aforementioned cases and that warrants of arrests were thus issued to have him arrested. His failure to attend the Court was occasioned by his sickness which led to his admission to hospital. He has produced medical evidence in support of his sickness and attached his medical sheets in support of this application. The applicant has deponed that he fears to attend the mention of any of those cases because he fears that he will be arrested immediately he shows up at Kibera Court and would be locked up thus jeopardising his health.

I have considered this application carefully. I am in agreement that the application has shown good reasons as to why the applicant failed to attend the lower Court in the various cases.

I have perused the lower Court records and confirmed that warrant of arrest is pending in criminal case 8635/2000 (Kibera). In this same case a notice has also been issued to the surety to show cause why his security should not be forfeited. In criminal case No.1584/00 (Kibera) a warrant of arrest is also pending for the apprehension of the applicant. It is my considered view that the applicant had good and genuine reasons for failing to attend Court in the five lower cases. Given such genuine reasons it is my considered view that the applicant should not had any fears in presenting himself to the trial magistrate in each of the cases in issue where he should have explained the reasons that made him fail to attend Court. The trial magistrate would then be at liberty to reinstate his bail terms or to reject to release him on bond.

If bail terms are not reinstated the applicant will then be at liberty to appear before the High Court to challenge the lower Courts order.

I therefore direct that the applicant should appear before the trial courts on 31/3/2003 to converse his reinstatement of bond giving such reasons as he was given to this court. To enable the applicant to report at Kibera Law Courts the applicant will be released on his own bond of Ksh.100,000/= one surety of the like amount or be remanded in custody if he cannot raise a surety. The applicants present application is meanwhile dismissed accordingly.

R.M. MUTITU

JUDGE

26/3/2003

Delivered in open court in the presence of Mr. Monda for state and in the presence of the applicant and

Mr. Ndungu for him.

R.M. MUTITU

JUDGE

26/3/2003