

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL REVISION NO. 12 OF 2001

SALMIN BWANAHERI BWANAMKUU APPLICANT

V E R S U S

ATTORNEY GENERALRESPONDENT

RULING

The applicant SALMIN BWANAHERI BWANAMKUU stood surety with another person to a Pakistani National who had been charged jointly with another in trafficking in drugs against narcotic drugs and psychotropic substances Control Act No. 4 of 1994. The first accused AMJID JAVAID HAJI was a Pakistani National. He was ordered to be released on bail pending trial under conditions that he signed a bond of Kshs. 200,000/- with one similar surety and a deposit of his passport.

He had 3 passports. Police suspected them to be fake so the court now ordered that sureties be two. The applicant became the second surety but the accused disappeared and did not attend court and so court asked the applicant to forfeit his bond of Kshs. 200,000/- or face an arrest by issuing a warrant of arrest.

The applicant wants this order reversed or terminated and brings this application under Section 362 and 364 of the Criminal Procedure Code for Revision.

Under Section 131 of the Criminal Procedure Rules sufficient cause is not shown and the penalty is not paid the court may proceed to recover it by issuing a warrant for attachment and sale of his property but before that court is to call the surety under Section 131(1) to ascertain that the recognizance has been forfeited and to show cause why it should not be paid. It is upon the applicant surety to satisfy the court why he should not pay the recognizance.

Where a surety wants to be discharged he must follow the procedure under Section 128 of the Criminal Procedure Code. As a general rule neither the arraignment nor conviction discharge recognizance which continues to bind both recognizance and surety until sentence or discharge under Section 128.

In this case the Learned Senior Resident Magistrate was within his powers under the Act. Application dismissed.

Dated and delivered at Mombasa this 15th day of August 2003.

In presence of:

Read to Mr. Gumo – Provincial State Counsel

No appearance for Applicant

A. I. HAYANGA

JUDGE.