



REPUBLIC OF KENYA



KENYA LAW
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**Omolo v Republic & another (Criminal Revision E094 of 2024)
[2025] KEHC 892 (KLR) (4 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 892 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E094 OF 2024
DR KAVEDZA, J
FEBRUARY 4, 2025**

BETWEEN

SAMWEL AKUMU OMOLO APPLICANT

AND

REPUBLIC RESPONDENT

AND

CLARKSON ONYANGO ACCUSED

RULING

1. The applicant filed the present notice of motion dated 23rd December 2024 seeking revision of the orders of the trial court issued on 18th and 23rd December 2024 detaining the applicant. The application is supported by an affidavit sworn by the applicant's advocate Ongeru Oyugi.
2. The averments made in support of the application are that the applicant stood surety for the accused in a criminal case before the Kibera Chief Magistrate's Court. He deposited his title deed as security. Subsequently, the accused absconded. The applicant was directed to attend court and explain the accused's whereabouts on 18th December 2024. On the same day, the trial court detained the applicant until 23rd December 2024. The court ignored the applicant's plea to release him and grant him time to locate the accused. The applicant is an elderly citizen of 73 years who is suffering from asthma and his continued detention has affected his health. He urged the court to revise the detention orders issued by the trial court.
3. The respondent did not file a response to the application.
4. I have considered the application, the arguments in support, and the applicable law.
5. These revision proceedings were commenced by the surety, complaining that the orders of detention against him were unprocedural and in particular section 131 of the *Criminal Procedure Code*, Cap



75, Laws of Kenya. In *John Mwanje Mutongoya vs. Republic* [2017] eKLR, the court underscored the fact that the undertaking that a surety enters into, to ensure that the accused person shall attend court at all times, as and when required, is a serious one. No doubt, when the accused person jumps bail there would be a breach of the undertaking, and that has the consequence that proceedings could be undertaken to realise the security offered by the surety.

6. The procedure to be undertaken where an accused person jumps bail is set out in section 131 of the *Criminal Procedure Code*. It is required that in such case the surety would be called upon to pay the penalty thereof, or to show cause why it should not be paid. Where the sufficient cause is not shown and the penalty is not paid, the court may then proceed to recover the same by raising a warrant of attachment and sale of the movable assets belonging to the surety or his estate, if he is dead. Thereafter, the warrant may be executed. Where the penalty is not paid, and it cannot be recovered by way of attachment and sale, then the court may opt to have the surety committed to jail.
7. It was emphasized in *John Mwanje Mutongoya vs. Republic* (*supra*) and *John Taracha Sindikha vs. Republic* [2005] eKLR, that affording the surety a fair hearing is a prerequisite before the recovery proceedings commence or are embarked upon. He should be served with a notice to pay the money within a specified and reasonable period of time or show cause why his property should not be disposed of for breach of the undertaking to ensure that the accused attends court at all times. The two processes may happen simultaneously or follow each other sequentially, although it would be fairer and prudent for them to follow seriatim.
8. In this case, when the accused absconded, the trial court issued summons to the surety on 18th December 2024 to attend court. Upon his appearance, the surety requested additional time to trace the accused. However, instead of granting this request, the court erroneously detained the surety, which was an incorrect application of the law.
9. The procedure employed by the trial court was flawed, as it did not conform with the requirements of Section 131 of the *Criminal Procedure Code*. The proper procedure required a fair hearing before detention or forfeiture, which was not accorded in this instance.
10. The actions and orders of the trial court in that regard are therefore amenable to revision under section 364 of the *Criminal Procedure Code*. I accordingly set aside all the orders that were issued by the trial court in the following terms:
 - i. The applicant/surety is released forthwith to assist the investigating officer in locating the accused persons.
 - ii. Kibera Magistrate's Court Sexual Offence's Case No. E041 of 2022 *Republic v Clarkson Onyango & Abraham Imayet* shall be mentioned periodically.
 - iii. Within six (6) months from the date hereof the sureties have not availed the accused persons, the trial court shall be at liberty to proceed as it deems fit under the law.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 4TH FEBRUARY 2025

D. KAVEDZA

JUDGE

