



REPUBLIC OF KENYA



**Maina v Republic (Criminal Revision E552 of 2023)
[2024] KEHC 5999 (KLR) (Crim) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5999 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E552 OF 2023**

LN MUTENDE, J

MAY 9, 2024

BETWEEN

JOHN NDUNGU MAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. John Ndungu Maina, the applicant, through a Notice of Motion filed herein on 25/7/2023 seeks review of the order of the trial court forfeiting his cash bail. The impugned order was delivered on 15/2/2022 by F. Kyambia, CM in Makadara Chief Magistrate Criminal Case No. E255 of 2021.
2. The applicant prays that the cash bail granted and subsequently forfeited be reinstated so that he can secure his freedom during his trial.
3. The application is premised on grounds that the applicant had travelled to Tanzania during the COVID-19 period when movement was restricted. That he rendered an explanation to court that was not considered yet he has a medical condition.
4. The application is opposed by the Respondent who submits that the applicant was brought under warrant of arrest and that he did not intend to attend court as per the Investigating Officer who arrested him at home. Further that cash bail should not be reinstated as the applicant can still benefit from bond terms issued by the trial court.
5. From the record of the trial court, the applicant was charged with the offence of Obtaining by False Pretence Contrary to Section 313 of the *Penal Code*; jointly with the co-accused, an offence that they denied. The sum stated to have been obtained is Ksh. 3,950,000/- The applicant was granted bond of



ksh 500,000/= and alternative cash bail of Ksh500,000/=: which was later reviewed downwards to Ksh 300,000/= with one contact person.

6. Upon being released the applicant did not turn up for trial between 15/2/2022 and 30/8/2022. A warrant of arrest was issued with a further order that the cash bail deposited be forfeited. It was not until 30/8/2022 that the applicant was apprehended and arraigned in court. The explanation given for his absence was that he had gone to buy maize across the border and that the border was closed in July 2022.
7. However, the Investigating Officer informed court that the applicant was dishonest as he was traced at his home and he had no intention of coming to court. It was therefore ruled that the explanation by the applicant was not plausible as he should have gone to court to have the warrant of arrest lifted. The court also found that there was no guarantee for his attendance if he continues with bail terms hence granted him bond of Ksh 1Million with similar surety.
8. The application was disposed through oral submissions. It was urged by the applicant that he failed to appear three times in court because of covid restrictions whereby the court rooms and registries were not operational and he did not know how to get in touch with the court.
9. The respondent through learned Senior Prosecution Counsel, Ms. Ogwenso submitted that as at 15/2/2022, there were no Covid restrictions. That the court found the applicant dishonest hence it is in best interest that the cash bail should not be refunded.
10. Revisional jurisdiction of the High Court is provided for by Section 362 of the [Criminal Procedure Code](#) (CPC) which enacts that:

“The High court may call for and examine the record of any criminal proceedings before any subordinate court for purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate Court.”
11. The court’s duty is limited to interrogating the proceedings and to rectify errors and omissions. The grounds of revision must prove that the orders were made illegally, were incorrect or were made out in breach of procedure.
12. Section 131 of the [CPC](#) 1.
 1. Whenever it is proved to the satisfaction of a court by which a recognizance under this Code has been taken, or, when the recognizance is for appearance before a court, to the satisfaction of that court, that the recognizance has been forfeited, the court shall record the grounds of proof, and may call upon any person bound by the recognizance to pay the penalty thereof, or to show cause why it should not be paid.
13. Looking at the conduct of the applicant upon being released on bail he did not turn up on 21/9/2021 the initial date of hearing. It was recorded that he was attending a burial. On the 28/9/2021 when the matter was to be heard, he did not attend court. In the result the order for warrant of arrest to issue and forfeiture was made. The cash bail was however forfeited on 2/3/2022 six (6) months later. The applicant had a contact person and advocate. Surprisingly they also failed to come to court.
14. Events that transpired prove that he did not voluntarily return to court, as he was arrested. And when he was presented before court he was granted the opportunity to render an explanation. He had no proof



of travel and the fact of staying away until being sought and traced made the court reach a conclusion and rightly so, that he had absconded.

15. When the applicant deposited the cash bail he entered into an arrangement with the court whereby he was required to attend court when and as required. This is not a case where he failed to turn up on one occasion but he absconded. In addition to the court issuing a warrant of arrest, the money/cash deposited was to be forfeited to the State. It will be a bad precedent to have an accused abscond trial, is arrested then the cash bail is released to him.
16. . From the foregoing, there was nothing irregular for this court to correct. Therefore, the application fails and is dismissed.
17. It is so ordered. Signed By: Hon. L

**DATED, SIGNED AND DELIVERED VIRTUALLY
THROUGH MICROSOFT TEAMS AT NAIROBI,
THIS 9TH DAY OF MAY, 2024.
L. N. MUTENDE
JUDGE**

