



**Owuor v Republic (Miscellaneous Criminal Application E374 of 2022)
[2023] KEHC 1902 (KLR) (Crim) (8 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1902 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E374 OF 2022
JM BWONWONG'A, J
MARCH 8, 2023**

BETWEEN

JOSIAH OUKO OWUOR APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for revision of order issued by Hon. Z Abdul
SRM on 4th February 2022 in Milimani Chief Magistrate's Court
Criminal Case No. 126 of 2015 Republic vs Josiah Ouko Owuor)*

RULING

1. The notice of motion for determination is dated December 7, 2023. The applicant sought orders to direct the trial court to lift the warrant of arrest issued against him. Secondly, the applicant sought the reinstatement of his cash bail, which was forfeited. The application is supported by grounds set out on the face of the notice of motion and is supported by an affidavit sworn by the applicant.
2. The grounds raised in support of the application are as follows. He was arrested in Oyugis after the trial court issued a warrant of arrest against him for absconding court hearings. At the time he was diagnosed with Covid-19 and was required to self-quarantine at his rural home. He is currently elderly and suffering from chronic illnesses. He urged the court to grant the orders sought to enable him get proper medical attention.

The applicant's oral submissions

3. The applicant submitted that the trial court had released him on a cash bail of Kshs. 65,000 in 2015. He argued that he did not abscond court hearing but had been placed under quarantine after contracting



Covid-19. He maintained that his life is in danger due to his condition. He urged the court to grant the orders sought.

The respondent's oral submissions

4. Ms. Chege, learned prosecution counsel submitted that the applicant has a history of perennially absconding court hearings. In addition, the applicant has already been placed on his defence and his trial is at its end. She urged the court to dismiss the application and let the hearing of the case to proceed to its conclusion.

Issues for determination

5. Having considered the application, the oral submissions and the applicable law, the issue for determination is whether the applicant should be granted the revisionary orders sought.

Analysis and determination.

6. The power of this court in its revisionary jurisdiction is founded under section 362 of the *Criminal Procedure Code* (cap 75) Laws of Kenya which provides that:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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.”

Article 165 (6) of *the Constitution* of Kenya also provides that:

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

7. On the merits of the application, the applicant seeks a revision of the orders of the trial court of February 4, 2022 and is seeking the reinstatement of his bail/bond terms.
8. From the record, when the matter came up for defence hearing on February 14, 2022, the applicant was absent. The trial court noted that it was not the first time that he had absconded and proceeded to issue a warrant of arrest and cancellation of bail/bond terms and with it the forfeiture of his cash bail. He was arrested and arraigned in eight months later on November 24, 2022. The record also indicates that the matter is at the defence hearing stage.
9. The bail/bond of the accused may be cancelled only where there is compelling reason, or the accused has breached the terms and conditions of release on bail/bond.
10. The question is whether the proper procedure was followed before its cancellation.
11. In considering whether to cancel the bond, the trial court must not only give a hearing to the prosecution but it must also give the accused adequate opportunity not only to defend himself but also to challenge the allegations laid by the prosecution. To my mind, the accused already had vested rights to the bail/bond. The accused was on the verge of losing his liberty, which he was enjoying as a result of the right to bail/bond, which he had secured. That right cannot be lightly taken away from him without ensuring that the principles of fair hearing set out in article 50 of *the Constitution* of Kenya are adhered to.



12. From the record, when the applicant failed to appear in court on February 14, 2022 the prosecution applied for a warrant of arrest to issue and to have his bail/bond cancelled. There is no reason why the court was in a hurry to grant the orders sought without ascertaining his whereabouts. Further, he had a right to respond before and to show cause why his bail/bond should not be cancelled. His right to a fair hearing which includes the rules of natural justice were therefore violated.
13. Accordingly, the motion is allowed, the applicant's bail in Milimani Chief Magistrate's Court Criminal Case No. 126 of 2015 Republic vs Josiah Ouko Owuor is hereby reinstated with the result that the applicant is hereby released on his previous bail/bond terms.
14. Consequently, the applicant is hereby set free unless he is held on other lawful warrants.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF MARCH 2023.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

The applicant in person

Ms Oduor for the respondent

