



**Matasi v ODDP (Criminal Revision E009 of 2022)  
[2023] KEHC 20017 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20017 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL REVISION E009 OF 2022  
PJO OTIENO, J  
JULY 14, 2023**

**BETWEEN**

**PETER MATUVACHI MATASI ..... APPLICANT**

**AND**

**ODDP ..... RESPONDENT**

*(Arising from the Chief Magistrate Court at Kakamega in Sexual Offence Case No 36 of 2019.)*

**RULING**

1. Before me is an application for revision by the applicant dated 27/4/2022 seeking a finding by this court, upon perusal of the file, that the trial court's cancellation of his bond terms was irregular and that the cash bail deposited be refunded to the depositor.
2. A brief background of the matter is that the applicant was charged, at the Chief Magistrate Court at Kakamega in Sexual Offence Case No. 36 of 2019, with the offence of rape contrary to section 3(1)(a) (b)(3) of the *Sexual Offences Act* No. 3 of 2006, on which charge he was acquitted.
3. It is contended that on the 2/2/2022, the applicant attended court for a mention when the trial court suddenly changed the mention to a hearing and ordered the applicant to look for a counsel. He went looking for the counsel and when he returned at 3PM he found the trial court had finished the session and adjourned. The court assistant then advised him to attend court on 1/3/2022 and when he did attend on the said date, the matter had not been listed and he was again advised to return on 16/3/2022 for hearing of the matter and it was on this date that the applicant learnt that the trial court had cancelled his bond.
4. Being a request for revision, the court has undertaken a perusal of the lower court proceedings which reveal the events leading up to the forfeiture of the cash bail to be as follows: -

“March 16, 2022



Court

“the court notes that the accused disappeared from the court room on February 2, 2022 after he realized that the court was going to hear the case”.

Accused.

“I did not know that I was supposed to come back.

Court.

“The court record is clear that the accused was to contact his advocate and then come back to court for the hearing of his case. He failed to return when he realized the court hear the case. On February 16, 2022 the court ordered for the forfeiture of his cash bail.”

5. The proceedings of 2/2/2022 have been captured as follows: -

“Accused

Am not ready. My advocate is not in court.”

Court

“Let the accused person contact his advocate. Court will take the evidence of the complainant as she is here in court”

6. The revisionary jurisdiction of the court is prescribed under section 362 as read with 364 of the Criminal Procedure Code to target perusal of the lower court file for the purposes of this court 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 with a view to correcting same by way of reversal, rectification or direction on the appropriate way forward.
7. With that position in mind, the issue here then turns out to be whether the trial court was right in issuing warrants of arrest on February 2, 2022 and thereafter forfeiting the cash bail on the February 16, 2022 before the warrants could be executed and in the absence of the accused.
8. The reason for the forfeiture of the applicant’s cash bail was his failure to return to court on 2/2/2022 and non-attendance on 16/3/2022. The record of the court says the accused when ask to look for his advocate for the case to proceed just vanished never to come back the whole day and did not come to court till the March 16, 2022. That is not the expectation by the court on any litigant before it. The accused had the duty to report to court whether or not he had contacted the counsel just like the counsel had the singular duty to attend court on every occasion the matter is listed so that he owns and becomes part of the management of the case including taking a convenient date to avoid unnecessary adjournments. To the extent that the counsel and the client gave to themselves the liberty to abscond and hold court at ransom, the court was entirely entitled to issue the warrants of arrest as it did.
9. The situation is not made any better by the accusation that the accused came back to court late, at 3.00pm and was told by an unnamed person to come on a date the matter was not listed. It is wanting that the counsel says nothing what he did when his client told him that he was wanted in court. Had the counsel executed his duty to court by attending, however late, he would have had the ability to peruse the court file and note the next date fixed, would have attended court with client on the March 16, 2022 and offered an explanation, thus obviated the forfeiture.
10. However, Court orders must be obeyed by all including the Court itself, the February 2, 2022 was a date fixed for mention according to the court orders of January 26, 2022. On that day what one in the



matter was expected to expect was the amendment of the charge sheet. It was thus unexpected for the prosecutor to insist on proceeding and for the court to concur with him on such irregular insistence even if the prosecution had changed his mind on need to amend. It is thus the determination by the court that it was irregular for the court to set on a path of hearing the matter on a date the same was scheduled for mention.

11. Moreover, having issued a warrant of arrest the court had the duty to inquire if the same had been executed and to get a reason why the accused was not in court. That is a responsibility of the court as a way of underscoring that court orders are never suggestions but commands. To the extent that the court proceeded to forfeit the cash bail without ascertaining that the accused had been notified of the date but failed to attend, there was an error on the part of the court. It would have been fully regular if on the date the accused absconded the court forfeited the cash bail.
12. In the circumstance, I find that the trial court acted in error in forfeiting the cash bail prior to cancelling the bond terms and on a date the accused had no notice the matter was before the court. Accordingly, I hereby set aside the order of the trial court made on February 16, 2022 and reinstate the cash bail. The applicant having been acquitted of the offence is thus at liberty to make an appropriate application to have the cash bail deposit refunded to the depositor.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 14<sup>TH</sup> DAY OF JULY, 2023.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of:**

Mr. Mulama for Mr. Ondieki for the Applicant

Ms. Owora for the Respondent

Court Assistant: Polycap Mukabwa

