



**Omondi v Republic (Miscellaneous Criminal Application  
E065 of 2022) [2023] KEHC 22234 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 22234 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E065 OF 2022**

**A. ONG'INJO, J  
AUGUST 3, 2023**

**BETWEEN**

**WILFRED OUMA OMONDI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Notice of Motion application dated April 20, 2022 seeking that there be a stay of proceedings in Mombasa Chief Magistrate's Court Criminal Case No E471 of 2022 that the proceedings therein are unfair and contrary to the provisions of Article 50 (2)(f) the Constitution of Kenya, 2010. The applicant also sought for orders of refund of Kshs 50,000 being cash bail that was paid to the 2<sup>nd</sup> respondent which was forfeited to the state on April 13, 2021.
2. The application was supported by grounds on its face and the affidavit of Wilfred Ouma Omondi.
3. The applicant argued that on March 10, 2022, he was released on cash bail of Kshs 50,000 with instructions to attend court on March 17, 2022 but when he appeared in court, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents did not appear and no charges were preferred against him. That he left the court premises and went to await further summons and none was forthcoming.
4. That when he instructed his advocate on April 14, 2022 for refund of his cash bail on April 20, 2022, the advocate informed him that a charge sheet had been registered on April 13, 2022 and his cash bail forfeited.
5. He said that the criminal trial was commenced in his absence without a notice and that the forfeiture was therefore illegal since he was not given an opportunity to show cause. He said the respondent's conduct was malicious and in bad faith calculated to occasion loss and prejudice to him.



6. The applicant annexed a copy of the said cash bail showing clearly that he was supposed to attend court on March 17, 2022.
7. A replying affidavit by CPL Jackson Karumba confirmed that the applicant was supposed to attend court on March 17, 2022 and said that the applicant was sick and could not attend and on March 28, 2022 he produced an OB extract showing that the applicant was at the station and the motor vehicle that had been detained was released to him at 1700 hrs. The applicant duly signed the OB showing that the motor vehicle had been released to him.
8. Corporal Jackson Karumba has not shown the text message that was sent to the applicant. Neither has he shown that the extension of the applicant's summon in the duplicate receipt was served on the applicant, call data to show that PC Maurice Kamene called the applicant are also not in court and the private communication alluded to were not presented before the court to confirm that the applicant had a notice to attend and that he deliberately refused to attend court.
9. In the circumstances, the forfeiture of the cash bail without a clear indication by way of an affidavit of service to show that he was properly served was illegal. The application to refund the applicant's cash bail is allowed. The applicant will therefore have to appear before the chief magistrate's court and stand trial for the charge against him. Mention before Mombasa Chief Magistrates Court Criminal Case No E471 of 2022 to take plea and have the law take its course on August 7, 2023.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS, THIS 3<sup>RD</sup> DAY OF AUGUST 2023.**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of: -**

Ogwel- Court Assistant

Mr. Ngiri for the Respondent

Ms. Atancha Advocate for Applicant

N/A for Applicant

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**Court:** Notice of ruling to be served by registry on applicant.

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**3.8.2023**

