



**Republic v Musalia (Criminal Case 6 of 2016)
[2024] KEHC 12174 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12174 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 6 OF 2016
SM MOHOCHI, J
OCTOBER 9, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SIMON OKINDA MUSALIA ACCUSED

RULING

1. The accused had on the 27th September, 2023 failed to attend Court and warrants of arrest were issued.
2. The accused absconded and by the 26th January 2024 this Court issued summons against the surety Simon Okinda Musalia and before the surety could appear in Court the accused was arrested and presented before Court on the 6th June 2024 after eight months, there this trial did not proceed.
3. Upon being presented the accused was without defence representation and the Court directed the Deputy Registrar to appoint Counsel to represent the accused.
4. On the 29th July, 2024 the prosecutor indicated they shall be applying that the accused undertakes the remainder of his trial from remand custody and that the bail/bond be cancelled.
5. Advocate Kairu came on record on 30th September, 2024 upon appointment by the Deputy Registrar, the prosecution made its application for cancellation of bail/bond indicating that the prosecution and the police cannot guarantee that the accused shall attend Court if released on bail.
6. Otokoma advocate submitted that the accused had been hospitalized (no evidence of hospitalization) that he is willing to appear in Court and that the surety (his father) his willing to continue and that his Bail Bond should be preserved.
7. In a rejoinder/s Mburu for state contended that, “it is not enough to merely state that the surety is willing to continue.”



8. That what is important is whether the accused can attend Court and the issue of hospitalization was an afterthought.
9. I have considered this application and observe that the accused failed to attend Court thereby delaying conclusion of his case for eight (8) months.
10. The accused equally subjected the state to unnecessary wastage in that the enforcement of the warrants of arrest had a financial cost implication.
11. The surety is the father to the accused and when he was approved as surety he undertook to ensure his son shall attend Court at all times without fail.
12. The surety failed in his duty and for eight (8) months he never came to Court to explain the absence of the accused. He disappeared with his son and only resurfaced when the accused was arrested.
13. The accused has not shown why he failed to attend Court for eight months and as such he is undeserving of Bail/Bond.
14. I am constrained to allow the application by the prosecution.
15. The accused person shall attend to his case from the remand custody.
16. The Bail/Bond granted in this case is cancelled and security deposited as surety shall be released to the surety. The surety is discharged.

It is so ordered.

RULING SIGNED, DELIVERED IN OPEN COURT ON THIS 9TH OCTOBER 2024

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MOHOCHI S.M

JUDGE

