



**Mwangi v Republic (Criminal Revision E472 of 2023)
[2024] KEHC 16622 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16622 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E472 OF 2023
A MSHILA, J
DECEMBER 6, 2024**

BETWEEN

JANE WAITHIRA MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. A brief outline of the case was that the accused one Ethan Kamau Njagi was charged with the offence of Personation contrary to Section 382 as read with Section 36 of the *Penal Code*, Cap 63 Laws of Kenya.
2. The accused was granted cash bail of Kshs.1,000,000/- and the Applicant deposited the cumulative sum into court in order to secure the release of the accused person pending the hearing and determination of his trial; the accused person had not been attending court without the Applicants knowledge and it was the Applicants contention that the trial court proceeded to cancel and forfeit the cash bail without summoning or notifying the Applicant; being aggrieved with the trial court's decision on forfeiture the Applicant lodged this application seeking revision of the orders made on 13th September, 2023 and the reinstatement and refund of the cash bail.
3. At the hearing hereof the Applicant was represented by Learned Counsel Mr. Mumo whereas the Respondent was represented by Prosecuting Counsel Mr. Gacharia, both parties made oral submissions; hereunder are the parties respective submissions.

Applicants' Case

4. The Applicant seeks for Revision of the order issued on 13th September, 2023 made by Hon. E. Ominde ordering for the cancellation and forfeiture of the cash bail; On the 19th September, 2023 the trial court issued warrants of arrest after the accused failed to attend court; The trial court never issued the Applicant with summons to attend court to explain why she had not secured the attendance of



the accused person in court and consequently show cause why the cash bail she had deposited should not be forfeited.

5. Upon moving the court on 26th October, 2023 the Applicant sought orders for reinstatement and refund of the cash bail but the trial court dismissed the application citing lack of jurisdiction to review the orders it had already issued and pronounced, that such orders being sought were only within the ambit of the High Court.
6. The accused person had already been convicted on account of his own plea of guilty and was serving his sentence. The Applicant submitted that being the cash bail depositor she had suffered immense loss from the forfeiture of the cash bail.
7. As the application was unopposed the Applicant prayed that it was only fair and just that the orders sought be granted;

Respondent's Case

8. In response Prosecuting Counsel for the State confirmed that it was not opposed to the prayer for the revision of the orders of 13th September, 2023.

Issues for Determination

9. After hearing the rival submissions this court has framed only one issue for determination which is as follows:-
 - i. Whether the trial court erred in failing to invite the Applicant to explain why she had not secured the attendance of the accused person in court and/ or show cause why the cash bail she had deposited should not be forfeited;

Analysis

10. Upon calling for the court record for perusal this court notes that the Accused had been charged in CMCR No.E742 OF 2020 with the offence of Personation contrary to Section 382 as read with Section 36 of the Penal Code. On the 27th October, 2020 the accused was admitted to bail and was granted a Bond of Kshs.2,000,000/- or in the alternative a cash bail in the sum of Kshs.1,000,000/- and the Applicant herein as his surety paid the cash bail amount into court; the accused person having failed to be in attendance on several occasions had a warrant of arrest issued against him on 19th July, 2020 and on the 13th September, 2023 the cash bail was forfeited; being aggrieved with the trial court's decision the Applicant preferred this instant application for revision.
11. The High Court stems its supervisory jurisdiction from the Constitution of Kenya Article 165(6) (7) which provides that:-

- “(6) 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) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”



12. The High Court also obtains its revisionary jurisdiction from the statute under Section 362- 364 of the *Criminal Procedure Code*. The court in exercising its discretion based on the above provisions is required to pay attention to circumstances of each case.
13. Upon calling for the trial court record and after careful perusal of the record it is apparent that the trial court did not follow the laid down process before the forfeiture of the Bond Security or cash bail as provided under Section 131 of the Criminal Procedure Code. The section requires that the trial court must first make an inquiry of the accused or his surety to show cause why the bond or bail should not be forfeited.
14. The court record reflects that the trial court failed to issue Summons and or Notice to Show Cause to the Applicant and it is also clearly apparent from the court record that the trial court did not accord the Applicant an opportunity to be heard before forfeiture of the cash bail.
15. In light of the above this Court is satisfied that an impropriety and irregularity has been demonstrated in the conduct of the proceedings by the trial court; the forfeiture without according the Applicant a chance to be heard is found to be a grave breach of her right to a fair hearing and such an injustice warrants the granting of the revisionary orders as sought by the Applicant.
16. The accused having pleaded guilty on his own accord and was duly convicted and sentenced and will therefore not be in any way prejudiced with an order for reinstatement and refund of the recognizance.
17. For those reasons this court is satisfied that the Applicant has met the threshold for the grant of the orders for revision;

Findings and Determination

18. For the foregoing reasons this court makes the following findings and determinations:-
 - i. The application is found to have merit and it is hereby allowed.
 - ii. This court finds that the order of 13/09/2023 without due process being followed warrants interference; the order of 13/09/2023 for forfeiture of the cash bail be and is hereby vacated.
 - iii. The Cash Bail of Kshs.1,000,000/- be and is hereby reinstated and it be refunded to the Applicant Jane Waithira Mwangi.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 6TH DAY OF DECEMBER, 2024.

HON. A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Mumo – for Applicant

Gacharia – for State

