

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL REVISION NO. E013 OF 2021

(Being a request for revision of the orders dated 11.01.2021 in the Original Meru CMC CRIMINAL CASE NO. S.O 13 AND 14 OF 2021 COURT AT MERU)

NICHOLAS GITONGA 1ST APPLICANT

LABAN KITHINJI 2ND APPLICANT

VERSUS

REPUBLICRESPONDENT

ORDERS ON REVISION

1. Pursuant to the order issued on 27.01.2021, the trial court file was placed before me pursuant to the provisions of sections 362, 363, 365 and 367 of the Criminal Procedure Code for purposes of revision of the court orders by the trial court dated 11.01.2021.
2. The challenge taken against the said order by the accused is that the suspension of bond terms was made without regard to the law and in misapprehension thereof and thereby the accused persons right to challenge the prosecution request was infringed, denied and threatened.
3. The purview of revision in our law is to check the correctness, legality and or propriety of the orders made by the lower court. That is done routinely and in all occasions without the need for address by parties unless the court in its sole discretion affords any party the right to be heard. The architecture of this mandate of the court is intended to enable an expeditious supervisory jurisdiction by the High court over the lower courts. What should be subjected to challenge by revision request therefore ought to be clear obvious and inviting no strenuous scrutiny and arguments beyond the records of the trial court.
4. In discharging my mandate under section 362 CPC, I have perused the trial court file and noted that the suspension of bond terms was temporary and pending reports by not only the Investigating Officer but also the Children's Department. In deed the matter was given a very early mention date which came to pass and matter revisited on 18.1.2018 when the suspension was extended with leave being granted to the accused persons to appeal against the refusal overturn the suspension.
5. However, on the 20.1.2021 the matter was once again in court when the investigating officer attended court and gave his explanation on oath and was duly cross examined. After the cross examination, the prosecution put up a request for cancellation of the bond terms but that request for cancellation of bond was decreed improper on account of lack of sufficient evidence. The temporary suspension was however extended with an order that the hearing be expedited with the evidence of minor and mother being heard on the 28.1.2021. The matter proceeded on 28.1.2021 with the evidence of the minor and the mother being taken whereupon the trial court did reinstate the accused bond terms but with additional conditions imposed.
6. With such development, the necessity and efficacy of the request for revision have been overtaken by events once the temporary suspension was lifted.
7. I would not put so much time in determining the request for revision but is important say that looking at the record, the order made on 11.1.2021 was indeed not incorrect, improper or illegal. It was to me an apt order regard being had to the allegations made by the prosecution regarding interference by threat upon the witness.
8. I see, in that order, a full desire to not only protect the vulnerable witnesses but also the court process when the evidence of the two vulnerable witnesses was taken in record time and thus making the temporary suspension of the bond terms uncalled for.
9. The facts from the record reveal a real situation that would militate against interfering with orders made. If not for the developments in the file, which have made any determination of the matter unnecessary, I would have dismissed the request. However, with the disclosed developments, I order that its purpose has been lost and that the High Court file be closed and the trial file be remitted back to the relevant registry.

Dated, signed and delivered this 5th day of February, 2021

Patrick J.O Otieno

Judge