



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

REVISION NO. E002 OF 2021

MONICA CHEPKOECH BORE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

{Being a Revision against the Order of the lower court in the Original Nyamira Chief Magistrate's Court Criminal Case No. 542 of 2020}

RULING

This file has been placed before me pursuant to a letter dated 23rd February 2021 by Boaz K Bulbul, Advocate. In the letter Counsel seeks revision of an order of the trial Magistrate in CMCRC No. 542 of 2020. Counsel has urged this court to call for the record of the trial court for purposes of satisfying itself as to the propriety, legality and correctness of the proceedings and orders made therein with regard to a warrant of arrest issued on 23rd February 2021. Counsel has narrated the facts which give rise to the application for review as being that the trial court rejected documents which he furnished to it on account of his client's failure to attend court and issued a warrant of arrest. It is his contention that he was not given a hearing and neither was the prosecution's input taken before the warrant of arrest was issued.

The power of the High Court to call for and examine the record of any criminal proceedings before any subordinate court is provided in **Article 165 (6) & (7) of the Constitution** and **Section 362 of the Criminal Procedure Code** which state: -

Article 165 of the Constitution: -

“(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.”

Section 362 of the Criminal Procedure Code: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of 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.”

Section 364 (1) of the Criminal Procedure Code provides that upon calling for the record the High Court may: -

“(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(c) in proceedings under section 203 or 296 (2) of the Penal Code, the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the Proceeds of Crime and Anti-Money Laundering Act, the Sexual Offences Act and the Counter-Trafficking in Persons Act, where the

subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.”

It is clear from the above provision that the power of the High Court on revision is unfettered save that where the order is likely to adversely affect the accused person he must be heard and the court has no power to convert an acquittal into a conviction. Though the court's discretion is unfettered it must as always be exercised judicially.

It is not disputed that the subject of this revision is an accused person in CMCRC 542 of 2020. It is also not disputed that a warrant of arrest was issued against her on 23rd February 2021 upon her non-attendance in court. The trial court's power to issue a warrant of arrest is provided under **Section 101** of the **Criminal Procedure Code** which states: -

“If the accused does not appear at the time and place appointed in and by the summons, and his personal attendance has not been dispensed with under section 99, the court may issue a warrant to apprehend him and cause him to be brought before it; but no warrant shall be issued unless a complaint has been made upon oath.”

Mr. Bulbul does not allege that the trial court had dispensed with attendance of his client as provided under **Section 99** of the **Criminal Procedure Code**. It seems to me therefore that the court acted within its jurisdiction to issue the warrant of arrest. Upon her arrest, the accused shall be taken before the trial court and she shall definitely be given an opportunity to give reasons for her non-attendance. In the premises I find no impropriety, illegality or irregularity in the proceedings or order made by the trial court and the application for revision is rejected. It is so ordered.

Signed, dated and delivered this 15th day of March 2021.

E. N. MAINA

JUDGE