

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 1 OF 2012

REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS

VERSUS

VIOLET KHANALI.....ACCUSED

RULING

1. I am tasked with determining a Motion, dated 24th March 2021. It is brought at the instance of the accused person herein, seeking that the order that was made herein on 26th October 2021, cancelling her bond be reviewed, varied or set aside.

2. The grounds on which the application is predicated are set out on the face of the application, as well as in the affidavit sworn in support. They are that the bond was cancelled because the accused failed to attend court for no good reason, that she was then acting under ignorance and that she has since learnt her lesson, that being in remand has been adequate punishment for her misfeasance, that she was remorseful and apologetic, and that she was undertaking to obey all the conditions of bond to be imposed.

3. The record indicates that the last time the accused person attended court was on 4th November 2015. She did not attend court on 25th November 2015 and 30th November 2015 when the matter next came up. An order for her arrest was made on 7th December 2015. The warrants of arrest remained in force until 26th October 2020 when she showed up I court.

4. When she was asked to account for not attending court since 2015, she said that she had been attending court but the file was not being called out. The matter was mentioned a record 50 times between the date she was last in court and when she eventually showed up. On occasion, her advocates were in attendance. The court was not satisfied that there was any good excuse for her not attending court for 5 years. Her bond was cancelled.

5. The prosecution did not file a response to the application, but made oral submissions, that the accused had not given any reasons as to why she was not attending court that 5-year period.

6. I have reviewed various decisions, where the High Court has had to consider reinstatement of cancelled bond. That is to say *Japhet Ochieng vs. Republic* [2015] eKLR (Mwita J), *Josphat Wambua Kitonga & 2 others vs. State* [2017] eKLR (D. Kemei J), *Elizabeth Achieng Abongo vs. Republic* [2021] eKLR (Aburili J), *Samuel Muthaura vs. Republic* [2020] eKLR (Gikonyo J), *Republic vs. Maureen Wanjiru Gakuro* [2018] eKLR (Lesiit J) and *Jonathan Batita & another vs. Republic* [2017] eKLR (Kimaru J). With respect to reinstatement of bond for absconding, the courts are uncompromising and unforgiving.

7. The factors to consider when reinstating bond terms for absconding, include, the nature of the offence, the number of times the accused person has absconded, the reasons given for absconding, the character of the accused, and the stage of the trial.

8. In *Samuel Muthaura vs. Republic* [2020] eKLR (Gikonyo J), the accused absconded for 2 months and attended court only after he was apprehended by the police. The court held that denying his bond, by way of not reinstating it, was justifiable as absconding was a compelling reason, as his attendance of court in future was not guaranteed. In *Jonathan Batita & another vs. Republic* [2017] eKLR (Kimaru J), the accused persons absconded court for an undisclosed period of time. When they were apprehended, on warrants of arrest, they argued that they had been unwell, and suffered from ailments which could not be treated while in prison. The court was not persuaded, as the accused persons were not able to explain why they did not attend court once their health improved. The court was also not convinced that the ailments could not be treated in prison. The plea for reinstatement was rejected, on grounds that there was no guarantee that the accused would not abscond in future, and their past conduct precluded the court from exercising discretion in their favour.

9. It was stated in *Republic vs. Danson Mgunya & Another* [2010] eKLR (Ibrahim J), that the primary criterion for grant of bond/bail is the availability of the accused to stand trial. All the other reasons or grounds flow from it. The nature and gravity of the offence is one of them, the more serious the offence the greater the incentive to jump bail. I agree totally with *Republic vs. Danson Mgunya & Another* [2010] eKLR (Ibrahim J), bond/bail is given on the undertaking that the accused person would attend court. That is the principal condition upon which the bond/bail is granted. It is at the core of the matter. Once that undertaking is broken or breached, then the foundation for bail/bond is destroyed. Bond/bail is founded on trust, that the accused will keep his word, and attend court as and when required, in accordance with the bond terms. Once that trust is broken or lost, there cannot be a basis for reinstatement of the bond.

10. In the instant case, the accused person faces a murder charge. She absconded for 5 years, the last court appearance having been in 2015. Four witnesses had testified as at that date. Her explanation is that she has been attending court, but her file was never called out on all the occasions she was in court. The record reflects that the matter came up 50 times, and all those occasions the warrant for her arrest was renewed. It would be inconceivable that on those 50 occasions the matter was never called out in open court. Furthermore, in some instances her advocates attended court, and they never saw her. If she attended court as alleged, it behoved her to approach the court registry and explain her predicament. That explanation flies in the face when looked at as against the reasons given in her application, that she had no reason for absconding, and that she was merely misguided. She cannot be trusted to attend court in future, should her bond be reinstated. To

borrow the words in *Samuel Muthaura vs. Republic* [2020] eKLR (Gikonyo J), her absconding for 5 years is a compelling reason to deny her reinstatement of bond.

11. There is no merit in the Motion, dated 24th March 2021, and I hereby dismiss the same.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17TH DAY OF SEPTEMBER 2021

W MUSYOKA

JUDGE