

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.332 OF 2019

REPUBLIC.....APPLICANT

VERSUS

MUKTAR IBRAHIM ALIRESPONDENT

RULING

This is the third time that an application has been filed to this court in respect of the bail terms of the Respondent. In the first Ruling delivered on 12th April 2019, this court allowed the Respondent's application to be released on bail pending trial on condition that he deposits bond of Kshs.5,000,000/- with two sureties of the same amount. In addition, the Applicant was required to periodically report to the Anti-Terror Police Unit at Manderu until further orders of the court. The Applicant was dissatisfied with the terms of bond that was imposed by the court. On 15th May 2019, he made an application to have the bond terms revised. This court favourably considered the application and ordered the Applicant's bond terms to be revised downwards to the sum of Kshs.2,000,000/- with two sureties of the same amount. The Ruling was delivered on 17th July 2019.

It appeared that the Applicant was not able to meet the bond terms. On 13th August 2019, the Applicant made an oral application before the trial magistrate's court seeking to further review the bond terms that were imposed by this court. The prosecution objected to the application on the ground that the trial magistrate lacked jurisdiction to review the bond terms since the High Court had already rendered a ruling in respect of the same. The trial magistrate overruled the prosecution's objection and proceeded to grant the Applicant a cash bail of Kshs.200,000/- with two Kenyan sureties. The decision was rendered on 5th December 2019. The prosecution was aggrieved by this decision. It made an application for revision before this court. The Respondent was served. He appeared before court through counsel on 29th January 2020. The Respondent's counsel had prior to that date written to the court indicating that the date fixed for the hearing of the application for revision was unsuitable. This court accommodated the Respondent's counsel and fixed the case for hearing on 25th February 2020. On that date, the Respondent's counsel did not attend court. This court allowed the prosecution to proceed with their application for revision, the absence of the Respondent's counsel notwithstanding.

Mr. Kiarie for the prosecution submitted that the trial court had proceeded to review the decision of this court on bail yet it lacked jurisdiction to do the same. Mr. Kiarie relied on the decision in **Republic v Fasal Mohamed & Others [2015] eKLR** where Muya, J held that in view of the hierarchical nature of courts as provided under **Article 162** of the **Constitution**, a magistrate could not lawfully review an order issued by a High Court Judge. Mr. Kiarie submitted that the imposition of new bond terms by the trial court went contrary to the decision of this court which had determined the bond terms that were to be complied with by the Respondent before his release on bail pending trial. In the premises therefore, Mr. Kiarie urged the court to review the decision of the trial court.

This court has carefully considered the application for revision. It was clear to the court that the trial magistrate fell in error when he purported to review the bond terms that were imposed by this court. If the Respondent desired the court to revisit the bond terms that it had earlier imposed, nothing would have been easier than for the Applicant to approach this court for appropriate relief. For the Respondent to make an application before the trial magistrate's court seeking to review the decision of the High Court smacks of mischief on his part. The magistrate's court has no jurisdiction to review a decision of the High Court as in the present circumstances. This court therefore finds merit with the prosecution's application.

The order issued by the trial magistrate on 5th December 2019 in **Nairobi Chief Magistrate's Criminal Case No.353 of 2019** is set aside and substituted by the order of this court restoring the bond of Kshs.2,000,000/- with two sureties of the same amount as earlier ordered by this court. The giving effect of this order shall be suspended until the normal court sessions resume. The case shall then be mentioned before this court for further appropriate orders.

DATED AT NAIROBI THIS 9TH DAY OF APRIL 2020

L. KIMARU

JUDGE