



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIMINAL APPLICATION NO. 28 OF 2018

CHARLES KIRIMI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. Before me is a revision application dated 16th April 2018 seeking review of Ruling dated 16th March 2016 by Honourable Sogomo G. in Tigania Pm Cr. No.1909 of 2016 and re-admit the applicant on bond.

2. This application is founded on section 132 of the Criminal Procedure Code (hereinafter the CPC). But, in essence it has called upon supervisory powers of the court to bear. The power is provided for in article 165(6) and (7) of the Constitution as hereunder:

167(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.

3. See also section 382 of the CPC reproduced hereunder:-

382. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:

Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.

4. The record of proceedings of the trial Court reveals that the applicant was charged on 29th August 2016 with causing grievous harm. The case has been numerously mentioned in the trial Court albeit it was partly heard.

5. On 26th June 2017 the trial court was not sitting hence the matter was subsequently mentioned on 27th June 2017. On the mention date, it was alleged that the applicant herein had absconded. Warrants of arrest were issued against the applicant and the cash bail was forfeited on 11th July 2017. The applicant herein alleges that at the time he was confined in a military facility.

6. Of particular focus however is the proceeding had on 25th August 2017. It shows that the prosecutor was aware of the applicant's confinement at Nanyuki Barracks. This is what the trial recorded about that fact;

Pros: the accused was arrested by the military authorities and he is being held at Nanyuki Barracks

7. The court then replied;

Warrants of arrest to issue for the accused to be executed by the Commanding officer Nanyuki Barracks.

8. On Counsels application for review orders dated 20th December 2017 he confirmed that the accused was confined at the school of infantry

albeit in Isiolo from 1.6.2017 to October 2017. The Court did not agree with this averment as the applicant had informed court that he was employed at a shop in Westlands and did not bother to regularise the lapses in his case.

9. Looking at these events and matters, the trial court only became aware of the whereabouts of the applicant on 25th August 2017. Therefore, the order forfeiting the cash bail was in order. Except, I should think that, when it became aware of his whereabouts, the trial court ought to have issued a production Order as opposed to warrant of arrest because the applicant was in 'confinement' in a military base for deserting duty and was not a free man.

10. Although there was conflicting information about his confinement especially the location thereof, notably steps were taken by the applicant to inform the trial Court and the prosecution of his confinement. This is justifiable reason and explains his absence in the trial. The trial magistrate therefore did not exercise judicial discretion in accordance with the principles of justice and right to bail.

11. In light of the circumstances of this case, I am inclined to and I hereby set aside the order by the trial magistrate and reinstate his bond as had been earlier been granted by the trial court. The applicant should however be keen not to miss the trial for that may cause his bond to be cancelled.

Dated signed and delivered in open court on 13th June 2019

F. GIKONYO

JUDGE

In presence of

Namiti for state

Appellant in person – present

F. GIKONYO

JUDGE