



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CRIMINAL APPEAL NO. 189 OF 2018**

**LEONARD KIPROP MAIYO .....APPELLANT/APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

(from the ruling of C. C. Kipkorir, SRM, in Mumias Criminal Case No. 433 of 2018 delivered on 18/12/18)

**RULING**

1. The appellant is facing a charge of robbery with violence at Mumias Law Courts. On the 18<sup>th</sup> December, 2018 the trial magistrate delivered a ruling in which she cancelled the appellant's bond for failure to appear in court for the hearing of his case. The appellant was aggrieved by the ruling of the trial magistrate and filed this appeal. The appellant contends that the learned trial magistrate erred in cancelling his bond.
2. The genesis of the matter was that the appellant's case was coming up for hearing on 16<sup>th</sup> October, 2018 when the appellant did not appear in court. His two co-accused were present in court. A warrant of arrest was issued against the appellant. The matter was adjourned to 13/11/18 when still the appellant was absent. His then Advocate **Mr. Melly** appeared in court. The advocates informed the court that appellant had been unwell and that he could not make it to court on that day due to public transport crackdown. Matter was put for mention on 22/11/18.
3. On 22/11/18 the appellant appeared in court. He explained that he had been unwell and that he had sent his advocate to report so to the court. He produced hospital documents that showed that he had been admitted at Moi Teaching & Referral Hospital at Eldoret on the 15/10/18. The trial magistrate questioned why he had not reported to court after he was discharged. The magistrate then cancelled his bond.
4. The advocate for the appellant then filed an application dated 20/11/18 seeking for reinstatement of the appellant's bond. The prosecution did not object to the reinstatement of the bond but left the matter at the discretion of the court. By her ruling delivered on 18/12/2018 the trial Magistrate considered the conduct of the appellant that he had come to court late on 3 previous occasions – 22/8/17, 27/7/18 and 11/10/18. That on 19/9/17 he did not turn up in court and turned up on 23/10/17 with medical documents to show that he was unwell. Then eventually he failed to turn up on 16/10/18 which led to the bond being cancelled. The magistrate held that the conduct of the appellant had led to delay in the hearing of the case.
5. The appellant was represented by **Miss Omar** in this appeal. She submitted that there was no justification in cancelling the appellant's bond. That he only failed to turn up in court once when there was public service vehicle crackdown. That it is the prosecution which is to blame for delay in the finalization of the case by conducting the prosecution in piecemeal and not the appellant. That the assertion by the trial court that appellant was to blame for the same was not factual.
6. I have gone through the court record and considered the application. There is no record that the appellant appeared in court late on 22/8/17 when he appeared for mention before Hon. F. Makoyo, SRM. Though the magistrate stated that the appellant appeared in court late on 11/10/2018, there was no court session on that day. It is on 11/9/18 that the appellant appeared in court late.
7. The dates the appellant is said to have appeared in court late on 22/8/17 and 19/9/17 were mention dates. The hearing dates when he appeared in court late were 27/7/18 and 11/9/18. On the former date the prosecution did not have witnesses. On the later date the case proceeded though the appellant had appeared in court at 10.10 a.m. On 27/7/18 it is recorded that the appellant had appeared in court at 9.40 a.m. The appellant was travelling from Eldoret. He was using public transport. The court should at least have accommodated him due to the distance and travel problems associated with public transport. It is not that he was unduly late.
8. The only hearing that the appellant missed was 16/10/18. He thereafter produced medical notes that indicated that he had been admitted at Moi Teaching & Referral Hospital at Eldoret one day before the hearing date. It is not in record as to when he was discharged.

9. The state counsel at the lower court did not oppose the application to have the appellant's bond reinstated. The state counsel in this appeal does not oppose the appeal. By virtue of the provisions of Article 49 (1) (h) of the Constitution, bond is a right that should not be denied to an accused person unless there are compelling reasons. The appellant herein is not entirely to blame for the delay in the hearing of his case. It is the prosecution that has all through conducted the hearing in piecemeal. There were no compelling reasons to cancel the appellant's bond.

10. In the premises the application for reinstatement of the appellant's bail in Mumias Criminal Case No. 295 of 2016 is allowed as prayed.

**Delivered, dated and signed in open court at Kakamega this 4<sup>th</sup> day of June, 2019.**

**J. NJAGI**

**JUDGE**

In the presence of:

No appearance for appellant

Miss Rotich for State

Appellant - present

Court Assistant - Ruto