

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

MISC. CRIMINAL APPLICATION NO. 62 OF 2018

JOSEPHAT MUTURI GATHENGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The court has considered the application by the Applicant **Josephat Muturi Gathenge**, charged with another in **Thika CM's Court Criminal Case No. 236 of 2015** with five counts of Obtaining money by false pretences contrary to Section 313 of the Penal Code.
2. Having called for and perused the copies of proceedings in the said matter, I note that as at August 2018 the hearing had yet to commence. In part, because the accused therein were frequently absent. In particular, the record is replete with absences by the Applicant, which resulted in issuance and extension of warrants of arrest against him. In his affidavit, the Applicant does not give the precise date when his bond was cancelled, and for my part, having reviewed the record of proceedings, I am unable to find any order or ruling to the effect that his bond be cancelled. I must observe however that the state of the photocopied proceedings furnished to this court by the Chief Magistrate's Court Thika is less than satisfactory, as the proceedings do not appear to be in the correct chronological order.
3. Nevertheless, having reviewed the entire record as it is, I am not persuaded that this is a proper case for this court to interfere. In many ways, the Applicant is the author of his own misfortune. He missed several court attendances since March 2016.
4. I therefore direct that the Applicant makes his application for reinstatement of bond before the trial court during the next scheduled hearing or mention. In that event, the trial court ought to make a proper ruling on the matter having heard all the relevant parties. Finally, in light of the age of the case, the trial court is urged to proceed with dispatch to hear and finalise it. A copy of this ruling to be sent to the trial court for compliance.

DELIVERED AND SIGNED AT KIAMBU THIS 19TH DAY OF SEPTEMBER 2019

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C. MEOLI

JUDGE