



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**R. MWONGO, J**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 6 OF 2018**

**JOHN NJUGUNA MATIRU.....APPLICANT**

**-VS-**

**REPUBLIC.....RESPONDENT**

**AND**

**MEDRINE WANJERI KARIUKI.....SURETY/INTERESTED PARTY**

**R U L I N G**

1. The Applicant filed an application under urgency on 20<sup>th</sup> March, 2018 seeking stay of the decision of the Chief Magistrate's Court in Criminal Case No. 1644 of 2016 (Republic -Vs- John Matiru) ordering the refund of cash bail to the depositor Ms Medrine Wanjiku Kariuki.
2. Apparently, there was a dispute concerning whether Medrine was the true owner of the money or the Applicant's daughter Leah Wanjiru Njuguna, who also filed an affidavit within that application stating that she was the one who sent the bail money to her aunt Medrine Kariuki.
3. This court gave orders *ex parte* on 5<sup>th</sup> April, 2018 extending the time for payment of cash bail and without taking into account the issue of the dispute as to the ownership of the said money.
4. Having heard the parties including the counsel for Medrine W. Kariuki who, upon this court's order filed a Replying affidavit, the position is now clear to the court.
5. There is *prima facie* evidence that Shs 206,160/= was deposited into the account of Medrine Kariuki. Leah Njuguna alleges it is she who deposited it, for payment of cash bail for her father, the Accused. Leah lives in Nairobi but Medrine, her aunt, lives in Naivasha and could easily have paid it on behalf of her father.
6. On the part of Medrine, her Replying Affidavit annexes the receipt for cash bail of Shs 200,000/= paid into court by her. She says the money was her own, that she can no longer stand surety for the Accused and wishes to be discharged and refunded her money; that the Accused was well known to her; that the Accused would refund her once he resolved his case.
7. It has also been brought to the court's attention that the issue of ownership of the money had arisen in the lower court. The proceedings of 24<sup>th</sup> January, 2017 show that Medrine requested the court for a refund. This was before Gesora, CM. This was challenged by the Accused's counsel. The court sustained the cash bail.
8. The issue came up again at the lower court before Nyambu CM, on 4<sup>th</sup> December, 2017. The Hon. Magistrate asked for proof that the cash was from the Accused's daughter. She directed that the bond issue be addressed at the next hearing.
9. The next hearing was before Hon. Karanja, PM on 1<sup>st</sup> March, 2018. He directed that the issue of cash bail will be dealt with together with issues surrounding the proceedings pursuant **Section 200** of the Criminal Procedure Code and a direction given on 7<sup>th</sup> March, 2018.
10. In his Ruling on 7<sup>th</sup> March, 2018 Hon. Karanja found that Medrine Kariuki accepted that the Accused's daughter sent her the money, but asserted that it was for other transactions. The Hon. Magistrate feared going deeper into the issue as it may open a Pandora's box and ultimately result in a trial within a trial. He ruled that Medrine is entitled to a refund of the cash bail as the court receipt is in her name. He

ordered the Accused to avail alternative security within 21 days. The decision was rendered in absence of Accused.

11. Given that the court had already entertained the issue, that court was bound to come to a conclusion thereon based on evidence. Applicant's counsel has cited the Criminal Revision case of **Republic -Vs- Rono Criminal Revision No. 80 of 2015 Naivasha**, in support of the position that where there is a dispute in court regarding the ownership of bail money deposited, the issue should be resolved. In that case **Meoli J.** stated that the lower court therein should not have been satisfied with merely advising the contestants to file a suit regarding that dispute. She held that a court of law has a duty to always uphold the rule of law and in all situations to jealously guard its process from any semblance of abuse by any party. The learned Judge went on to order that a proper inquiry be made by the CID Narok who should then report to the lower court. This is prudent and I agree with the judge in that case.

12. In the present case, there is no overwhelming evidence on the true ownership of the cash bail money. An inquiry is necessary. But that is not the role of this court or the lower court. It is the purview of either a criminal case if theft or fraud is alleged or other illegality is alleged by Medrine Kariuki or Leah Njuguna. Alternatively, it may be the subject of a civil suit.

13. Until one of the two actions is taken by the present actors/disputants the problem will continue to fester. The disputants are free to take such actions. Until that is done, I am of the view that the just and proper order to give is or follows; given that the disputants and the bail money are already under proceedings which are the subject of court process. The orders are as follows.

14. The orders herein are as follows:

1 (a) Pending resolution of the ownership of the cash bail deposited in court, the disputed sum of Shs 200,000 shall continue to be held by the lower court.

(b) Accordingly, the order for release of the said cash bail to Medrine Kariuki is hereby stayed.

2 (a) The disputants Medrine Kariuki and Leah Njuguna are hereby ordered to report to the Naivasha CID Office within the next seven (7) days with all their verified and certified primary evidence concerning the disputed cash bail money.

(b) The disputants shall give full co-operation to the CID in respect of the ownership of the said bail money. Details of such co-operation or lack of it shall be recorded by the CID in their report.

(c) The CID Naivasha shall file full Report with the lower court not later than 15<sup>th</sup> August, 2018 when the matter shall be mentioned for consideration of CID Report; and the court shall thereafter make an informed determination thereon.

3. In light of the orders herein, this Court's Order No. 2 of 5<sup>th</sup> April, 2018 is hereby deemed to be of no effect

4. The disputants herein, being related to one another or being friends, are notified that Alternative Dispute Resolution (ADR) Mechanisms may be resorted to by them to resolve their dispute and that it is this court's responsibility to promote ADR in exercise of its judicial authority pursuant to Article 159 (2) of the Constitution.

Orders accordingly.

**Dated and Delivered at Naivasha this 12<sup>th</sup> Day of July, 2018**

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**RICHARD MWONGO**

**JUDGE**

Delivered in the presence of:

1. Wairegi for Applicant

2. Ms Ndegwa holding for G. Kimani for Interested Party

3. Mr. Koima for state

Court Clerk – Quinter