



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.708 OF 2018**

**PATRICK MUTURI KAARA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Patrick Muturi Kaara is facing several charges before the trial magistrate's court. The Applicant is out on bond pending his trial. On 4<sup>th</sup> July 2018, the Applicant failed to attend court. The trial court issued a warrant for his arrest. It also ordered the cash bail of Kshs.200,000/- that the Applicant had deposited in court to be forfeited to the State. The Applicant was aggrieved by this decision and has applied to this court to have the order of forfeiture set aside and the cash bail be reinstated. The Applicant explained his failure to attend court on the particular day was not deliberate but was, rather as, a result of confusion as to the venue of trial. The Applicant stated that on that particular day, he waited in open court for the trial court while proceedings were taking place in chambers. When he learnt that adverse orders had been issued against him, he immediately made the present application for reinstatement of the cash bail. It was for that reason that the Applicant was pleading with the court to exercise its discretion and reinstate his cash bail.

During the hearing of the application, this court heard oral submission made by Mr. Thuku for the Applicant and by Mr. Momanyi for the State. It was clear from their submission that they were in agreement that the Applicant had failed to attend the particular court due to confusion as regard the venue of the trial. This court formed the view that the Applicant made an honest mistake in failing to attend the particular court on that day. The Applicant persuaded this court that he was in the court's precinct on the particular day and therefore his failure to attend the trial court in chambers was due to misapprehension of the venue of trial. In the premises therefore, this court is of the view that the Applicant has made a case for this court to reinstate his cash bail.

The order issued by the trial court on 4<sup>th</sup> July 2018 forfeiting the cash bail is hereby set aside and substituted by an order of this court reinstating the same. The matter shall be mentioned before the trial court on 10<sup>th</sup> December 2018 so that a suitable hearing date can be fixed. It is so ordered.

**DATED AT NAIROBI THIS 6<sup>TH</sup> DAY OF DECEMBER 2018**

**L. KIMARU**

**JUDGE**