



**REPUBLIC OF KENYA**

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

**MISC. CRIMINAL APPLN. NO. 6 OF 2017**

**JUSTUS OKWIRI OUMA.....APPLICANT**

-versus-

**REPUBLIC.....RESPONDENT**

**RULING**

1. By a Notice of Motion filed on 21/03/2017, the Applicant prayed for an order to set aside the order of forfeiture of his cash bail of Kshs. 10,000/= made by **Hon. M. M. Wachira**, Senior Resident Magistrate, on 26/10/2016 in **Migori Chief Magistrate's Criminal Case No. 865 of 2015 Republic vs. Justus Okwiri Ouma**. The case was withdrawn on 18/11/2016.

2. He contends that his failure to attend the hearing of that criminal case was a result of having been arrested by the police and remanded at the Migori G.K. Prison and that he could only appear in court on a Production Order.

3. He was however charged afresh in **Migori Chief Magistrate's Criminal Case No. 787 of 2016 Republic vs. Justus Okwiri Ouma** which case is at defence hearing.

4. The Applicant further contends that his pleas before the trial court were not successful and as such he has remained in remand due to inability to raise a further Kshs. 10,000/= cash bail. He prays that his cash bond in Criminal Case No. 865 of 2015 be reinstated to him to secure his release from remand in Criminal Case No. 787 of 2016 since he is an ailing cancer patient.

5. This Court called for both lower court files and has carefully perused them. I note that the Applicant participated fully in Criminal Case No. 787 of 2016 and was ready for his defence before this application.

6. Having considered all issues in these matters, I hereby make the following orders: -

(a) The Court file in **Migori Chief Magistrate's Criminal Case No. 787 of 2016 Republic vs. Justus Okwiri Ouma** shall be forthwith returned to the trial court for further hearing. To that end, the same is hereby fixed for a Mention on 12/06/2017 before the trial court;

(b) The Applicant shall avail evidence that he was incarcerated during the time when he was required to appear before the trial court in **Migori Chief Magistrate's Criminal Case No. 865 of 2015 Republic vs. Justus Okwiri Ouma**.

(c) This matter is hereby fixed for a Mention on 14/06/2017.

Orders accordingly.

**DATED, SIGNED and DELIVERED at MIGORI this 6<sup>th</sup> day of June 2017.**

**A. C. MRIMA**

**JUDGE**