



**REPUBLIC OF KENYA**

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

**REVISION NO. 80 OF 2016**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**JOSEPH TARUS ..... 1<sup>ST</sup> ACCUSED**

**JOHANA KIPCHUMBA ..... 2<sup>ND</sup> ACCUSED**

**ROBERT KIPRONO ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. I have considered the application for revision made to this court by Hon. *N.C Adalo* Resident Magistrate in letter dated 2<sup>nd</sup> June, 2016.
2. The application relates to orders made on 25<sup>th</sup> April, 2016 in Criminal Case No. 211 of 2016 registered in the Senior Principal Magistrate's Court at Iten.
3. I have perused the record of the lower court which has been forwarded to this court. I note that on 25<sup>th</sup> April 2016, the lower court ordered that the cash bails deposited by each of the three accused persons in the aforesaid case be forfeited to the state. The court record shows that pursuant to that order, the accused persons' cash bails were forfeited to the state on 12<sup>th</sup> May, 2016.
4. It is apparent from the record that the order was made on the wrong premise that the accused persons had absconded and had therefore failed to honour their bail terms. I have noted from the proceedings recorded on 13<sup>th</sup> May, 2016 that the Court Assistant reported to the court that the accused persons had been in court on the date warrants for their arrests were issued and that their bonds had been extended to 13<sup>th</sup> May, 2016.
5. The court record however shows that the accused persons were not in court when the warrants for their arrests were issued. It is therefore not clear whether they subsequently appeared in court and the Court Assistant then extended their bonds to 13<sup>th</sup> May 2016. If that was the case, it is difficult to understand why their bonds were extended to 13<sup>th</sup> May, 2016 instead of 25<sup>th</sup> June, 2016 when the case was next scheduled for mention.
6. In view of the foregoing, it is evident that the accused persons cannot be faulted for their absence in court on 25<sup>th</sup> June, 2016 when the forfeiture orders were issued. There is no doubt that the said orders were issued in a labyrinth of confusion that cannot be attributed to the accused persons.
7. In my opinion, money deposited in court as cash bail should only be forfeited to the state if the trial court is satisfied on the basis of information before it that an accused person has in fact absconded. In this case, the orders were issued on the first mention date when the accused persons were not aware that they were required to be in court their bonds having been extended to a different date.
8. There is therefore no doubt that the orders forfeiting the accused persons' cash bails were irregularly issued and ought to be reversed by this court in the exercise of its revisionary

jurisdiction which is donated to it by **Section 362** as read with **Section 363** and **Section 364** of the **Criminal Procedure Code**.

9. In the result, I find merit in the application. In the exercise of the powers bestowed on this court by **Section 364** of the **Criminal Procedure Code**, I reverse the orders of the trial court issued on 25<sup>th</sup> April, 2016 . Consequently, the cash bails in the sum of Kshs. 20,000 deposited in the lower court by each of the accused persons on 24<sup>th</sup> February, 2016 are hereby reinstated.

10.The Deputy Registrar is hereby directed to ensure that the lower court's original record is forwarded to the trial court before 17<sup>th</sup> June, 2016 when the case is scheduled for hearing.

It is so ordered.

**C.W. GITHUA**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 7th day of June, 2016**