

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION 171 OF 2016

JESSE MWANGI NJUGUNA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Jesse Mwangi Njuguna, the Applicant herein, made an application to this court for the revision of an order denying him bail in **Criminal case 3129 of 2013** in the Chief Magistrate's Court at Makadara. The application was brought under Articles 24,27,29,49(1)(h) & 159(d) of the Constitution, Sections 123,124,125,132,362 and 364 of the Criminal Procedure Code and Section 72 of the Interpretation of General Provisions Act. In his Notice of Motion he prayed that the ruling delivered on 24th August, 2016 by Hon. H.M. Nyaga to be stayed and/or set aside and consequently the courts admit him to bail.

The Application was premised on grounds that the Applicant was charged with 5 counts of obtaining goods by false pretense which he had pleaded not guilty to, that the reason for the refusal to grant him bail/bond was due to his failure to appear in Criminal Case No. 1138 of 2012 which led to a warrant of arrest issuing, that he was remorseful and that having stayed in remand for 7 months he should be given a second chance. He promised to abide by any terms of bail/bond that may be imposed. A Supporting Affidavit by his advocate, Ajaa Olubayi accompanied the Notice of Motion in further emphasizing the grounds on which the application is premised

Mr. Olubayi submitted that his client had absconded in Criminal Case No. 1138 of 2012 as a result of which the case was withdrawn under Section 87(a) of the Criminal Procedure Code. He submitted that those same charges were reinstated in Criminal Case 3129 of 2014, the current case the Applicant is charged in. He conceded that the trial magistrate declined to admit the Applicant to bail due to the fact that he absconded in the previous trial. He submitted that the Applicant had learnt his lesson and urged that he be admitted to bail on stringent terms.

Ms. Nyauncho, for the Respondent opposed the application on ground that the Applicant was flight risk having failed to honour the previous terms of bail.. She submitted that the Applicant had not put forth an explanation for this absence and that the documents he availed in court to explain his absence were found not to be genuine. She submitted that the Applicant is charged with obtaining goods worth 49 million shillings and if admitted to bail he may abscond to the detriment of the complainant.

It is trite that bail pending trial is a right set out under Article 49(1)(h) of the Constitution. It is an inherent right that cannot be derogated unless there are compelling reasons. It is clear that the compelling reason expressed by the trial court was the Applicant's previous behavior whereby he absconded in Criminal case 1138 of 2012. The Applicant has conceded the fact that he did indeed abscond but that he has since learnt his lesson. The major consideration in granting bail pending trial is the assurance that an accused will avail himself for trial upon his release. The failure of the accused to make attendance is a matter that impedes the ends of justice as a trial cannot be undertaken in his absence. In the present case, the Applicant went against this cardinal tenant that is core in the administration of criminal justice. He absconded from the trial which compelled the prosecution to withdraw the case under Section 87(a) of the Criminal Procedure Code. The case was reinstated after he was arrested and had to be charged afresh in criminal case No. 3129 of 2014. By his own conduct, he has demonstrated that he is a flight risk.

Moreover, his previous antecedent attests that he cannot be trusted on his word; that he has learnt his lesson and was remorseful. He lied that he was sick when in fact he was not. When he was arrested, he stated that he had been sick for the period of his absence. Unfortunately investigations revealed that he had only been sick for a very short period and was therefore feigning illness to attract the sympathy of the court. It is therefore difficult to ascertain that he will avail himself if bond is granted.

In the circumstances, the learned trial magistrate properly declined to admit the Applicant to bail. He rightly upheld that there were compelling reasons to warrant a denial of bail to him. I do not find any irregularity, illegality or incorrectness in the order that he gave to warrant its revision. This application is accordingly dismissed.

DATED and DELIVERD this 15th Day OF NOVEMBER, 2016

G.W.NGENYE-MACHARIA

JUDGE

In the presence of;

- 1. Mr. Ombayi for the Applicant*
- 2. M/s Kimiri for the Respondent.*