

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINALREVISIONNO.53 OF 2015

PHILIP WANJAU KARIUKI (FLORENCE WAMBUGU).....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

Pursuant to a letter dated 23rd March, 2015, the applicant, Florence Njoki Wambugu, asks this court to revise Hon. Ocharo's order issued on 8th April, 2013 forfeiting the cash bail which she had paid for her son, Philip Kariuki who was the accused in Makadara Criminal Case No.5591 of 2012. The said Philip Kariuki unfortunately died on 24th February, 2013.

The applicant went to Makadara Law courts to claim the cash bail. She was informed by the Executive Officer that the cash bail had been forfeited on 8th October, 2013.

The lower court proceedings have been forwarded to this court pursuant to Section 363(2) of the Criminal Procedure Code so that this court can satisfy itself as to the correctness, legality and/or regularity of the proceedings.

The record shows that on 10/6/2013, an order of forfeiture of cash bail was issued in respect of all the three accused persons who were absent in court. On 8/10/2013, the court was presented with a letter dated 7/10/2013 indicating that the applicant's son had died. Annexed to it was a death certificate No.282621 and burial permit No.348794. For that reason, the court ordered that the cash bail in respect of Philip Kariuki be released to his mother, the applicant herein.

However, on 09/10/2013, the court's attention was drawn to the order of 08/4/2013 forfeiting the cash bail and effectively recalled that order. The cash bail was accordingly not released to the applicant.

Copies of the Burial Permit and Death Certificate show that Philip Kariuki died on 24/2/2013. He could not therefore avail himself in court on 08/04/2013 when a warrant of arrest and forfeiture of cash bail was issued. In my view the trial court took a drastic action of ordering the forfeiture of the cash bail without satisfying itself as to the whereabouts of the accused. Only a warrant of arrest ought to have been issued on the first day the accused absented himself from court. Cash bail would only have been forfeited much later and after several mentions when the court would have been satisfied that the accused was deliberately absenting himself from court.

This drastic order of the trial court was, in the circumstances, erroneous as the same was issued at a time when the accused Philip Kariuki was already dead and could not avail himself in court.

In the result, I set aside the trial court's order dated 8/4/13 forfeiting the deceased's cash bail. I substitute it with an order that the cash bail paid by the applicant of Kshs.40,000/- vide receipt No.0124527 dated 19/11/2012 be released to the payee Florence Njoki Wambugu, the applicant herein.

DATED and DELIVERED at NAIROBI this 11thDay of MAY, 2015.

G. W. NGENYE – MACHARIA

JUDGE