

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 29 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

THOMAS KIPKEMOI KIPKORIR & 2 OTHERS.....ACCUSED

RULING

Thomas Kipkemoi Kipkorir, the 1st accused, and his co-accused persons Joseph Komen Yatich and Sebastian Yano Komen are jointly charged with the murder of Nicholas Ochieng Odongo on 30th March 2012 at Kwitu Classical Bar in Eastleigh Section 3 within Nairobi County. Hearing has not commenced since 19th April 2012 when the plea was taken for various reasons appearing on the file records. All the three accused persons were admitted to bail. The terms and conditions of bail in respect of the 1st accused following the review of the terms were that he executes a personal bond of Kshs 500,000 with two sureties. In addition to this the 1st accused was required to report to the Officer in Charge of Industrial Area Police Station every alternate Monday of every month until the case is heard and determined among other conditions. On 3rd August 2012 the 1st accused got a surety in the name of Richard Chesire Cherop who deposited a log book Serial Number S509969L for motor vehicle number KBE 019G. There is also on record receipts showing cash deposit of Kshs 500,000. The receipt in the court file shows the money was paid by the 1st accused 31st July 2012 although Mr. Richard Chesire Cherop told the court that it was his sister Rael Cherop who paid that money.

This case came before me for the first time on 25th November 2014 when all the three accused persons were not in court. Warrants of arrest were issued against them but these were lifted on 26th November 2014 after the three attended court. This court noted that the hearing dates had wrongly been indicated on their bond documents as 26th and 27th November 2014. Due to that anomaly there were no witnesses in court on 26th November 2014 having been released on 25th November 2014 after the accused persons failed to attend court. The case was adjourned to 9th and 10th March 2015. The 1st accused jumped bail. His counsel Mr. Opolo told the court that he could not reach him on phone as it was switched off. The case was put off to 10th March 2015 and a warrant of arrest went out against the 1st accused and a notice to show cause was issued against his surety. On 10th March 2015 he was not in court. This court kept on mentioning the case on the issue of execution of the warrant until 23rd April 2015 when the 1st accused was brought to court after his arrest. He was remanded in custody until 4th May 2015 to allow for time for his counsel to be notified to attend court.

On 4th May 2015 the surety Mr. Richard Chesire Cherop who was in court in compliance with the notice to show cause told the court that he was not aware that the 1st accused had not been attending court. He further told the court that he had attempted to reach him on his mobile phone without success because it was switched off. Mr. Opolo for the accused told the court that his client had instructed him that he did not attend court because he had been indisposed and that he was urging the court to lift the warrant of arrest against him.

The prosecution counsel asked the court to cancel the bond and remand the 1st accused in custody until this case is heard and determined because he had not given sufficient reason why he had failed to attend court.

I have considered this matter. There is the issue of the surety. It appears to me that Mr. Richard Chesire Cherop did not understand what his duties as a surety entailed. He told the court that he thought the 1st accused was attending court when required to do so. He told the court that when he attempted to reach him on his mobile phone he did not go through because he always found the phone switched off. This court has considered this and has decided to give Mr. Richard Chesire Cherop the benefit of doubt. I will therefore not order the forfeiture of the amount of the bond though I feel that he did not take his duties as a surety and also this court processes seriously. I issue a warning to him however that he ought to respect and take seriously the court processes and that these should not be abused. Next time he decides to stand surety for someone else he ought to know it can be costly.

On the part of the 1st accused, it is my finding that he has not shown cause why this court should allow him to continue enjoying his freedom when he cannot honour court processes. He must have been warned that the right to be released on bond is conditional to him abiding by the terms and conditions set by the court. The paramount consideration on being released on bond is to secure the attendance in court of an accused person. When that person fails to attend court, he breaches the most fundamental principle in matters bail.

He told the court that he had been indisposed and that is the reason he never attended court when he was required to. He actually wants this court to believe that! He must have put his counsel in an awkward position because I doubt that Mr. Opolo believed a word his client told him but I give Mr. Opolo credit for representing his client without questioning his conduct. I want to believe that when people get sick they send word to that effect. The 1st accused had his counsel, his surety, actually two sureties, his co-accused and family members. He never thought it wise to send any of these people to court to inform it that he was sick. He did not come with any medical notes to that effect either. This court does not believe him. In my view, he decided to abscond hoping the law will not catch up with him or he just did not care about the case he is facing or even respect the court and its processes.

Having given this matter serious consideration, it is my view that it would be in the interest of justice to keep the 1st accused where this court is assured of getting him when it needs him in court. I will and do hereby cancel his bond and remand him in custody until this matter is heard and determined. He shall be remanded at Industrial Area Remand Prison and appear in court whenever he is required to do so.

As stated above I will give the surety Mr. Richard Chesire Cherop the benefit of doubt and discharge him from being a surety for the 1st accused without serious consequences to his failure to be a serious surety. He is at liberty to collect his logbook from the custody of this court. I am not able to order release of cash bail of Kshs 500,000 until proof has been provided of who deposited the amount and whose money it is. I make orders accordingly.

Dated, signed and delivered this 6th day of May 2015.

S.N.MUTUKU

JUDGE