



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CRIMINAL REVISION NO. 80 OF 2015

(Original Criminal Case No. 324 of 2014 of the Senior Principal Magistrate's Court at Narok, formerly Nakuru High Court Revision 51 'B' of 2015)

REPUBLIC -VERSUS- DAVID RONO

RULING ON REVISION

1. This matter was referred to the High Court for revision vide the letter dated 22nd May, 2015 by the firm of Mirugi Kariuki & co the advocates for the Accused. The same was addressed to the High Court in Nakuru but was eventually redirected to the High Court in Naivasha. Hence the delay
2. At issue is the sum of Shs 500,000/= deposited in the lower court by one Richard Kipkurui Langat as cash bail for the accused in the Criminal Case No. 324 of 2014. The case was subsequently withdrawn. The court made an order after hearing all the concerned parties that the cash bail be released to the depositor.
3. The letter repeats the contention, made before the learned trial magistrate, that although the cash was paid into court by the depositor, it had been given to him by one Ms Maritim being a loan advanced in favour of the accused; and that the accused repaid the said money to the lender also his advocate (Ms Maritim). Affidavits were sworn and filed by the said accused and Ms Maritim to that effect. I do not see any affidavit sworn by the depositor, Richard Kipkurui Langat.
4. At the material time, the original cash bail receipt was in possession of the accused. That notwithstanding, counsel for the depositor asserted in court that the court could not enquire into the source of money deposited by a depositor. Thus the accused and depositor each demanded release of the money to themselves.
5. I have considered the proceedings before the lower court and the affidavits sworn by the accused and Ms Maritim. I take the following view. On the face of it, Richard Kipkurui Langat was the person who deposited the cash bail on behalf of the accused and therefore *prima facie* the rightful payee of any refund upon the conclusion of the case. That is what should ordinarily happen.
6. The learned trial magistrate correctly observed that the registry or court was not required to inquire into the source of cashbail deposited by a depositor, and further that the court should not be dragged into any borrowing arrangements made between accused persons and third parties. The trial magistrate court cannot be faulted for making these observations.
7. However, the court did not in my view give due consideration to the two affidavits sworn by the accused and his counsel Ms Maritim, and the fact that the former wielded the original receipt. Secondly, the alleged depositor did not, for his part swear an affidavit to firm up the assertions by his lawyer that the money was his, or to explain how the original receipt ended up in the custody of the accused. While the court may not ordinarily be required to investigate the source of cash

bail deposited to secure the freedom of an accused, I think this particular situation presented a special exception. Because, a court of law cannot shut its eyes to the suggestion of suspected illegal conduct before the face of the court.

8. In my considered view, if it turns out that Richard Langat Kipkurui was merely a messenger or go-between enabling the deposit of cash bail lent to the accused by his lawyer Ms. Maritim, his attempts to get the money refunded to himself as his own could render him liable to criminal investigations. On the other hand, if the accused and Ms Maritim swore false oaths before the court with the intention of receiving funds not due to them, it opens them up to criminal culpability.
9. I am of the view that in light of the large sums of money involved, the court ought not to have peremptorily dismissed the accused's claims. At the minimum the lower court should have required Richard Langat Kipkurui to swear an affidavit to firm up his claims to the cash in light of the competing claims by the accused and his advocate. I do not think that the trial court should have been satisfied with merely advising Ms Maritim and the accused to file a suit against Richard Kipkurui Langat.
10. A court of law is obligated to always uphold the rule of law and in all situations to jealously guard its processes from any semblance of abuse by any party. Considering all the matters touching on the disputed sum, I would order that:-

“a) the order for release of the cash bail to Richard Kipkurui Langat be stayed.

b) a proper enquiry be made by the CID Narok with a view to verifying the allegations made by the respective parties concerning the deposited sum.

c) pending the investigations the disputed sum be held by the court.

d) The CID, after investigations should file their report with the lower court on or before 7th August, 2015 when the matter will be mentioned so that the court can consider the CID Report and make appropriate orders”.

Delivered and signed at Naivasha this 8th day of July, 2015.

C. W. MEOLI

JUDGE