



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**Criminal Division**

**CRIMINAL CASE NO. 79 OF 2011**

**REPUBLIC.....PROSECUTOR**

**-VERSUS -**

**PHOEBE BELDINE MITOWE..... ACCUSED**

**RULING**

The accused Phoebe Beldine Mitowo was arraigned in this court on 3rd October 2011 being the first appearance. The plea was taken on 13th October 2011 whereas the accused denied the offence. The accused was granted orders for bond of Kshs.2,000,000/= with one surety on 30th April 2013. On the 20th November 2013, one Jenifer Odiyo Ochieng stood surety for the accused who was thereby released. This was after the counsel for the accused had successfully applied for review which brought down figure for bond to Kshs.1,500,000/= but maintained the requirement for a surety.

On 30th January 2014, the surety came to court accompanied by the accused, her mother and the counsel Mr. Ochieng. She expressed the fear that the accused was preparing to abscond and wanted to withdraw as a surety.

The case was fixed for mention on 3rd February 2014 for surety to make her application before this court. When the case came up for mention, the accused failed to attend court. A warrant of arrest was issued against the accused. The surety was in court but could not make her application due to the absence of the accused. The surety was also directed to meet her legal obligation of availing the accused person in court.

The case came up for mention on the 11th February 2014 after the accused was arrested by police. The surety made her application to withdraw which this court allowed and discharged her from any legal obligation in respect of the accused.

The accused explained to the court that she failed to attend the trial on 3rd February 2014 because she was sick. She requested for time to produce the treatment notes from Mbagathi and Metropolitan hospitals. Her bond was suspended pending the production of the medical records. She was remanded at Langata Women prison.

Come the mention date on the 13th February 2014 when the accused presented some prescription, a report on a photocopied letter head of Mbagathi District hospital and a treatment note by one Dr. Owuor. The prescription was undated and there was no name of the doctor who issued it. The report was also undated bearing the name of Dr. James (with no other name). Both documents do not bear the hospital official stamp. The Discharge summary by Dr. Owuor shows that the accused was admitted in Mbagathi District

hospital on 3rd February 2014 and discharged on 7th February 2014. The summary report is also not dated.

The prosecution dismissed the documents as not being genuine and asked the court to cancel the bond of the accused.

In her explanation on 11th February 2014 the reason for her absence the accused said that she attended Mbagathi District Hospital on 3rd February 2014 and was treated. She did not say that she was admitted in that hospital. If she had been admitted, the information was very vital and core to her explanation. It would be unlikely that such vital information would have escaped her attention at that defining moment when her bond was at risk of being cancelled.

The accused went on to tell the court that on 3rd and 4th February 2014, she also attended Metropolitan hospital and that she would produce the treatment notes. She did not explain the reason for attending two hospitals on one day i.e. 3rd February 2014. Was it a referral by a doctor from one hospital to the other? The question remains unanswered.

The accused delayed to produce the documents. On 11th February 2014 she requested for one hour to produce the documents saying that she had sent someone to bring the documents to court. The court granted her request but she was not able to produce the documents until the next mention date on 25th February 2014. On that date, she produced documents for Mbagathi District hospital but said she did not have documents for Metropolitan hospital.

The court makes some observations herein:

- a) That the undated prescription and the undated report both of which have no name of the maker (doctor) are not in my considered opinion genuine;
- b) That the discharge summary purportedly made by a Doctor Owuor is also undated and it strikes me as a fake document. This is confirmed by accused's own statement that she went for treatment at Metropolitan hospital on 4th February 2014. If she was admitted in Mbagathi Hospital between 3rd and 7th February 2014, she could not have gone to Metropolitan hospital on 4th. Similarly, it was not possible for her to attend two hospitals which are more than 10 kilometres apart in one day on the 3rd February 2014. It is important to note that the accused was purportedly admitted in Mbagathi Hospital on 3rd February 2014 according to the records she produced.
- c. The delay in submitting the documents which were supposed to be in the possession of the accused brings into focus the possibility of obtaining doctored documents for presentation to this court.
- d) Even assuming that the accused was admitted in hospital for 4 days as she wants the court to believe her grandmother who is the surety and other close relatives ought to have known or at least been informed.
- e) The accused was well aware that she had failed to attend court on 3rd February 2014. As such, she ought to have had the courtesy to inform the court of her predicament on that very day or at least a few days later. It was inevitable that the court was to seek for an explanation for the failure to attend court. With this expectation the accused ought to have prepared the treatment notes and medical reports for presentation early enough.
- f) The fact that the accused had to be arrested by police and arraigned in court under a warrant of arrest does not mitigate her innocence.

I am convinced that the medical records and treatment notes from Mbagathi District Hospital are not genuine.

The explanation of the accused person for absconding court is therefore unacceptable. The fear of her surety that accused was preparing to abscond was indeed well founded because she actually absconded court on 3rd February 2014.

For the foregoing reasons the orders for release on bond made on 30th April 2013 and reviewed on 8th October 2013 is hereby set aside. The accused shall remain in Langata Women Prison until her case is heard and determined.

**F. N. MUCHEMI**

**JUDGE**

**Ruling** delivered on the **5th** day of **March, 2014** in the presence of the accused, the defence counsel Mr. Ochieng and the State Counsel Ms. Ekol.

**F. N. MUCHEMI**

**JUDGE**