

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISCELLANEOUS CRIMINAL APPLICATION NO. 35 OF 2014

ROBERT ODHIAMBO OKECHAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. In this application dated 16th January 2014, brought by way of Chamber Summons, the appellant prays for the reinstatement of cash bail. He had been released on cash bail of Kshs.200,000/= in the lower court. He attended court in the beginning but after two witnesses had testified he absconded on 31st January 2013. The trial court issued a warrant of arrest in his regard but did not forfeit the cash bail to the state. A month later when he still had not been traced, the trial magistrate ordered for the forfeiture of the cash bail to the state.
2. The applicant states that he did not abscond but was away because he was arrested by Langata police in regard to two other matters which, learned state counsel Mr. Mutua stated are of a similar nature. He says that when he was released at the police station on cash bail he visited the court registry with his lawyer but his file could not be traced. That he wrote to the registry to list his case for mention but they did not do so. He states that he also wishes to make arrangements to refund the complaints money while out on bail.
3. Mr. Mutua learned state counsel opposed the application stating that, the appellant faces similar charges in **Cr.C. no. 669/2013**, wherein he obtained Kshs.950,000/= from one Douglas Wangia Waudu to supply him with a motor vehicle. That in **Cr.C. 670/2013** the applicant obtained Kshs.800,000/- from one Elivista Njeri to supply her with a Suzuki Escudo motor vehicle in **count I**, and Kshs.343,000/= to supply one Lillian Akinyi with a motor vehicle in **count II**. That to date he has not satisfied his part of the contract in any of those instances and the sum total of the money obtained in the four instances is colossal. Mr. Mutua submits that the applicant is therefore, a flight risk.
4. Under **Article 49(1)(h)** of the **Constitution** an arrested person is entitled to bail unless there are compelling reasons to deny it. The court uses its own discretion in granting bail but will deny it, if in its view, the applicant is not likely to avail himself for the trial.
5. The court will usually consider the gravity of the charges facing an applicant, and the severity of the sentence in the event of a conviction being entered against him. The court will also consider the applicant's antecedents among other considerations, to determine whether or not to grant bail.
6. The court records do not indicate any efforts on the appellant's part to attend court. The Investigating Officer had to use data from SafariCom Mobile Services to track and arrest him. Meanwhile his lawyer did not attend court to state what had befallen his client nor write any letters to the registry inquiring about the case.
7. The applicant's antecedents therefore, indicate that he is a flight risk as he has demonstrated before. The cash bail was rightfully forfeited to the state because he failed to guard his liberty

jealously while out on cash bail and decided to skip bail. The medical evidence he has attempted to produce in court shows that he made one out patient visit to the hospital during the time he kept away from court. That could not have kept him away from court for months.

The intention to refund the complainants money is encouraged as that will put the complainant back into her money. The applicant will however have to make those arrangements while in custody. The trial court is however, at liberty to revisit the issue once the trial gets underway. The application for reinstatement of bail is dismissed.

SIGNED DATED and **DELIVERED** in open court this **3rd day** of **March 2014**.

L. A. ACHODE

JUDGE