



**Oballah v Republic & another (Criminal Revision E021 of 2025)
[2025] KEHC 16121 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 16121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL REVISION E021 OF 2025
WM KAGENDO., J
OCTOBER 23, 2025**

BETWEEN

SAMUEL ABIERO OBALLAH APPLICANT

AND

REPUBLIC RESPONDENT

AND

DEBORRAH NGOYA OMWARA ACCUSED

*(Revision of Orders in Criminal Case No. E584 of 2023 R vs Deborah Ngoya Ombwara
at the Chief Magistrates Court Mombasa on 4th March, 2025 and 13th January, 2025)*

RULING

1. This Ruling follows a makeshift application by the applicant herein who contests the legality of orders issued in Criminal Case No. E584 of 2023 R vs Deborah Ngoya Ombwara whereby the court issued Warrants of Arrest against him on the pretext of his knowledge and kinship with the accused persons.
2. The context of the matter as particularized by the applicant is that the accused person was charged with two (2) counts, the offence of obtaining money by false pretense contrary to Sec 313 of the Penal Code and the offence of uttering a false document contrary to section 353 of the Penal Code.
3. That, on the said case he is neither the accused person nor a surety but when the matter was mentioned before the trial court on 13th January, 2025, Warrants of Arrest were issued against him on allegations that he knows the whereabouts of the accused person as she is her sister-in-law.
4. It is the applicant's position that he was arrested at his place of work on 21st January, 2025 and presented in court the following day, where he was directed to produce the accused person in court. The trial



court directed that he remains in custody at Kingorani Prisons, Mombasa until such a time when the accused shall be produced.

5. That, he remained in custody until 4th March, 2025 when he again presented in court and the prosecution, through the investigation officer requested his release so as to assist them in tracing the accused person. He was thereby released and order to appear before court on 7th April, 2025.
6. It is thus the appellant's view that the process followed by the trial court in arresting and remanding him was improper, illegal and an abuse of the court process, and any further attempt to suppress his liberty by ordering him to appear in court is illegal and ought to be quashed, considering that he has come to learn that the surety was similarly arrested and is currently serving time in prison.
7. It is noteworthy that despite directions by this court upon the respondent to consider the application and trial court proceedings and accordingly file a response, as at the time of making this determination, none was on record.

Analysis and Determination

8. This court's revisionary jurisdiction and powers are provided for under Section 362 and Section 364 of the Criminal Procedure Code, respectively.

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

364. In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

...

- (b) in the case of any other order other than an order of acquittal, alter or reverse the order.

9. The ramifications of absconding court by accused persons while out on bail/bond are provided under Section 131 under the Criminal Procedure Code. Naturally, the Bond secures the attendance of the accused for his/her trial and it matures upon default to ensure the attendance of the accused at the relevant Court.
10. Section 131 provides that:
 - 1) Whenever it is proved to the satisfaction of a court by which a recognizance under this Code has been taken, or, when the recognizance is for appearance before a court, to the satisfaction of that court, that the recognizance has been forfeited, the court shall record the grounds of proof, and may call upon any person bound by the recognizance to pay the penalty thereof, or to show cause why it should not be paid.
 - 2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover it by issuing a warrant for the attachment and sale of the movable property belonging to that person, or his estate if he is dead.



- 3) A warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorize the attachment and sale of the movable property belonging to the person without those limits, when endorsed by a magistrate within the local limits of whose jurisdiction the property is found.
 - 4) If the penalty is not paid and cannot be recovered by attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment for a term not exceeding six months.
 - 5) The court may remit a portion of the penalty mentioned and enforce payment in part only.
 - 6) When a person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of his recognizance, a certified copy of the judgment of the court by which he was convicted may be used as evidence in proceedings under this section against his surety or sureties, and, if the certified copy is so used, the court shall presume that the offence was committed by him unless the contrary is proved.”
11. In this instance, the above procedure is elaborate in instances where an accused person absconds the jurisdiction of a court and the warrants of their arrest are yet to be executed, and efforts to trace and bring the accused before the trial court have been in vain. The next procedure is to forfeit the recognizance that he had stood surety for the accused before the trial court.
 12. For what is worth, the trial court can only issue a warrant for the surety's arrest to recover the forfeited amount. If the penalty for recognizance cannot be recovered through attachment and sale of their movable property, then the surety may also be liable to imprisonment for a period, not exceeding six months. See Republic v Ltupuken (Criminal Case 88 of 2018) [2023] KEHC 25417 (KLR) (14 November 2023) (Ruling)
 13. In this instance the applicant is not a surety in the matter. His purported involvement and unfortunate arrest are on the pretext that he is among the accused person's kin.
 14. To this court's dissatisfaction, the justification and reasoning of the said orders as sought by the prosecution through the investigating officer, have not been proffered herein as no response to the instant application was instigated.
 15. In my view, the trial court misapprehended itself in couching a procedure that is neither provided nor sustainable under law. It is simply legally unfeasible and in contravention of the rights and freedoms of the applicant to liberty, and the circumstances do not fall within the exceptions and/or limitations to his constitutional right.
 16. Accordingly, I find merit in the application, to the end that the trial court orders on 13th January, 2025, 21st January, 2025 and 7th April, 2025 issuing Warrants of Arrest against the applicant, in so far as production of the absconding accused person are hereby set aside.
 17. The applicant, being not a surety in the matter herein at the trial court, shall not be unlawfully arrested or held in custody in so far as producing the absconding accused person is concerned.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 23RD DAY OF OCTOBER 2025.

W.K. MICHENI

JUDGE



In The Presence Of;

For The Applicant In Person

For The Respondent.....mr Ngiri

Court Assistant.....ms Bebora

