



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: GITHINJI, OKWENGU & J. MOHAMMED, J.J.A)

CRIMINAL (APPLICATION) APPEAL NO. 151 OF 2017

BETWEEN

KELLY KASES BUNJIKA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(An appeal from a judgment of the High Court of Kenya at Kabarnet (Muriithi, J.) dated 23rd August, 2017

in

H.C. Misc. Cr. Appl. No. 64 OF 2017)

JUDGMENT OF THE COURT

[1] By a notice motion dated 11th July 2017 and registered as High Court Criminal Miscellaneous Application No. 64 of 2017, the appellant sought review of two orders – firstly the order of the Principal Magistrate given on 28th November 2016 in Criminal Case No. 52 of 2016 and secondly the review of the order of the Principal Magistrate dated 22nd February 2016. By the first order the Principal Magistrate declined to review the bond terms and by the second order, the Principal Magistrate declined to grant the appellant bail pending trial.

The notice of motion was brought under various Articles of the Constitution and various sections of the Criminal Procedure Code. By a ruling dated 23rd August, 2017, the High Court (Muriithi, J.) declined to grant the order sought but ordered that the hearing of Criminal Case No. 52 of 2016 be expedited. This appeal is against the ruling of the High Court.

[2] The appellant was jointly with another charged in Criminal Case No. 53 of 2016 at the Principal Magistrates Court at Eldama Ravine with the offence of robbery with violence contrary to **section 296(2)** of the **Penal Code**. The appellant pleaded not guilty and the trial was scheduled for 7th July, 2014. However, on that day the trial court was informed that the appellant had escaped from custody. The trial was adjourned and a warrant of arrest was issued. On 30th December, 2015, the appellant was taken before the trial magistrate. The court was informed that the appellant was arrested on the previous day. He was remanded in custody and the trial rescheduled. On 22nd February, 2016, the appellant asked the trial court to revise the bail term. The court declined but stated that the accused's bond of Shs. 250,000/- plus one surety of the same amount still stands.

By a further ruling dated 27th February 2017, the trial court for reasons stated earlier, cancelled the terms of the bond and ordered that the appellant do remain in custody. Six witnesses have already given evidence in that case.

[3] In Criminal Case No. 52 of 2016 of the Principal Magistrate's Court at Eldama Ravine, the appellant is charged with the offence of escape from lawful custody contrary to **section 123** of the Penal Code. The appellant pleaded not guilty. After four witness had given evidence the appellant applied for bond but the trial court on 28th November, 2018 dismissed the application.

[4] By the impugned ruling, the High Court made a finding that the bond terms of Shs. 250,000 with one surety for the offence of robbery with violence was not harsh and unfavourable to the appellant; that in the case of the charge of escape from lawful custody, there is a real possibility that the appellant may not attend the trial and that the proper cause is to direct an expedited trial and determination of the charge of escape from lawful custody.

[5] The respective counsel filed written submissions which were orally highlighted on 7th November 2018. During the oral highlighting **Ms. Oduor**, learned prosecution counsel brought to the attention of the Court that the appellant had already been convicted for the offence of escape from lawful custody and sentenced to two years imprisonment on 29th October 2018. **Mr. Nabasenge**, learned counsel for the appellant admitted that the appellant was on 29th October 2018 convicted for the offence of escape from lawful custody but submitted that the appellant has appealed. A copy of the warrants issued by the trial court verifying that the appellant was so convicted and sentenced on 29th October 2018 has been filed in court.

[6] By the memorandum of appeal, the appellant seeks an order that the bond in the robbery case be reinstated and that he be granted bond in the case of escape from lawful custody. It is obvious that by the time the appeal was argued, the appeal had been overtaken by events as he was now serving a lawful prison sentence. It is therefore unnecessary to deal with the appeal on the merits.

[7] For the foregoing reasons, the appeal is dismissed as it has become moot by the conviction and custodial sentence for escape from lawful custody.

Dated and delivered at Eldoret this 28th day of June, 2019.

E. M. GITHINJI

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JUDGE OF APPEAL

H. M. OKWENGU

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JUDGE OF APPEAL

J. MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR