



**Republic v Ngetich (Criminal Case 57 of 2018)
[2024] KEHC 1920 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1920 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 57 OF 2018
SM MOHOCHI, J
FEBRUARY 28, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

COSMAS KIPLANGAT NGETICH ACCUSED

RULING

1. The accused was arrested on the 6th December 2018 and was eventually arraigned on murder charges on the 21st February, 2019.
2. The accused was then 16 years old and was accordingly admitted to extremely reasonable bail bond terms of personal recognizance of Kshs.100,000/= by Catherine Chepkurui Maragoi and Stanley Kibet Langat.
3. The two sureties were the mother and a teacher of the accused.
4. It would appear that the Court had dispensed with attendance of the accused until there was certainty of the trial hearing proceedings.
5. From the 22nd February, 2019 to the 30th January, 2020 the child offender was appearing and record reflects that his advocate Towett would equally be absent once a while.
6. Most reason given as to why trial never commenced was that the child offender was attending school and attempts were made at having hearing dates fixed during school holidays.
7. On the 16th November, 2021 the child offender was recorded as absent (permission of the court) and this was the last time Mr. Towett appeared in Court.
8. The matter went cold as both the child offender and his defence counsel were constantly absent.



9. No warrants of arrest were ever issued until the 13th March, 2023 when the prosecution did indicate to the Court that warrants of arrest had been issued in June 2022 and the surety (mother) had been summoned.
10. This Court confirms that the first time surety was summoned was on the 15th February, 2022 and no warrants of arrest were issued.
11. This Court notes that the child offender was presented on 5th February, 2024 after warrants of arrest were issued against the surety and Mr. Stanley Kibet presented him.
12. The prosecution immediately applied for cancellation of bond and that the child offender who is now an adult concludes his trial while in remand custody.
13. The accused who was unrepresented was granted time to get legal representation to respond to the application for bail/bond cancellation.
14. The accused had initially informed the Court that he had all along been unaware of his case hearing dates as he had lost touch with his advocate Towett since April 2021.
15. The Court allowed the accused to respond on the 14th February, 2024 when the previous advocate Mr. Towett now a judicial officer graciously sent Mr. Ondicho to hold his brief and respond.
16. Mr. Ondicho urged the Court to lift the warrants and placed the blame squarely on Mr. Towett's door, that Mr. Towett had gone missing in action.
17. That the accused person and the sureties are of limited academic/educational qualifications that they never knew of their primary responsibility to attend to Court as and when required.
18. That the absence of the accused was not deliberate.
19. The prosecution urged cancellation of bail/bond arguing the primary responsibility to attend Court is upon the accused and not his advocate.
20. That the accused was in Court when the dates were being fixed.
21. That the Court should form an inference that the absconding was an attempt to frustrate the prosecution. That the accused had been informed of his obligation.
22. Upon considering the application, I am convinced that the situation persisting is as a result of multiple factors that cannot all be visited upon the accused:
23. The accused was a child offender from arraignment until 11th December, 2020 going by the age assessment report, when he turned 18 years old.
24. At no point did the accused be summoned to attend Court and his appearance had been dispensed with; the same was never vacated.
25. No warrants of arrest were ever applied for and properly issued against the accused.
26. The accused was never in Court owing to the dispensation of his appearance.
27. I am thus persuaded to restore his bail/bond terms.
28. He shall be expected to present one fresh surety at the same terms.

It is so directed.



SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 28TH DAY OF FEBRUARY, 2024.

Mohochi S.M

(JUDGE)

