



**Hareshi v Republic (Criminal Revision 13 of 2023)  
[2024] KEHC 2794 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2794 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 13 OF 2023  
DR KAVEDZA, J  
MARCH 20, 2024**

**BETWEEN**

**RABADIYA SANJAY HARESHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for revision of the order issued on 8th September 2022 in Criminal case no. E2186 of 2021 Republic vs Pindoria Naran & Sanjay Rabadiya)*

**RULING**

1. The applicant filed an application vide letter dated 16<sup>th</sup> September 2022. In his application he sought the revision of the orders of the trial court issued on 8<sup>th</sup> September 2022 forfeiting the applicant’s cash bail.
2. The application is premised on the assertion that the applicant never absconded from court. It is stated that in 2022, a new magistrate was appointed to preside over the case in Court 8, and a warrant for arrest was issued on March 24, 2022 for failure to attend court. It is noted that during this time, the applicant’s advocate was present in court. The representative requested that the case be scheduled for a hearing on March 29, 2022, in order to address the lifting of the arrest warrants against the applicant.
3. On March 29, 2022, the arrest warrants were lifted, and a further court date was set for April 26, 2022. However, on April 26, 2022, the applicant’s advocate was absent as he was on sabbatical leave. Subsequently, another advocate assigned to the case failed to appear, resulting in a new arrest warrant being issued. When the advocate eventually attended court, he attempted to explain the applicant’s absence, but the court proceeded to forfeit his cash bail. It is this order that he is praying to be refused,
4. In response, the respondent filed grounds of opposition. The grounds raised are that the applicant has not demonstrated reasonable grounds upon which the court can review the orders of the trial court.



The applicant breached the bail terms set by the court hence the forfeiture. The applicant is devoid of merit and should be dismissed.

5. I have considered the application, the response, the applicant's written submissions and the applicable law. The issue for determination is whether the applicant should be granted the revisionary orders sought.

6. The power of this court in its revisionary jurisdiction is founded under Section 362 of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides that:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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.

7. Article 165(6) of the Constitution provides that:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi-judicial function, but not over a superior court.

8. Consequently, this court has jurisdiction to entertain the application before me. On the merits of the application, the applicant was charged and during the trial failed to appear in court on 30<sup>th</sup> May 2022. The prosecution sought and was granted an order for the forfeiture of cash bail. When the matter came up again for mention, the applicant on 8<sup>th</sup> September 2022, the applicant sought a review of the orders of forfeiture of the cash bail and lifting of the warrant of arrest issued. The applicant argued his case.

9. The trial court considered the reasons advanced and affirmed the decision to forfeit the cash bail. The warrant of arrest was lifted and new bail terms set.

10. The main issue is whether the order of forfeiture of his cash bail was proper. Section 131 of the Criminal Procedure Code sets out the procedure of forfeiture of recognizance and securities, and the factors the court must satisfy itself of before the order of forfeiture is made. That section provides as follows:

131. (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) ...”

- 11. No forfeiture can legally be made before giving an opportunity to the person who will be adversely affected by such order an opportunity to show cause why the forfeiture should not be made. In this case, the order was inadvertently made without giving the applicant an opportunity to show cause. However, on 8<sup>th</sup> September 2022, the applicant was given another opportunity for the court to review its orders of forfeiture. The applicant was given an opportunity to be heard and give reasons why he absconded court appearances. The order was therefore made in compliance with section 131 of the [CPC](#). It was also in line with the rule of natural justice that a person should not be condemned unheard.
- 12. On whether the court considered the matter on its merits, the applicant alleged to have been unwell and could not attend court. He was given an opportunity to furnish the court with documentary evidence of why he absconded. His advocate lay the blame squarely on his doorstep for the failure of his client to attend court. The court considered the evidence on its merits and made an order for the cash bail forfeited be implemented by the accountant. The order of the court was regular, procedural, and in the circumstances legal.
- 13. The upshot of the above analysis is that the application 16<sup>th</sup> September 2022 is found to be devoid of merit and is dismissed.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF MARCH 2024**

---

**D. KAVEDZA**

**JUDGE**

In the presence:

Applicant Absent

Ms. Tumaini for the Respondent

Joy Court Assistant

