



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL REVISION NO.11 OF 2019

(Application Originating from Nyahururu CM's Court Tr. No.70 of 2019 by: Hon. S. N. Mwangi - SRM)

JEREMIAH MUGO MUIRURI.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

REVISION ORDER

Jeremiah Mugo Muiruri is seeking a review of the order of Hon. S. N. Mwangi made on 16/12/2019 committing the applicant to remain in custody till the matter is heard on 30/01/2020, under *Section 362 of the Criminal Procedure Code*.

The applicant has sworn an affidavit that he has been coming to court without fail save for 14/10/2019 when he missed to attend because his wife was unwell and a warrant of arrest was issued against him. That he came to court on 14/11/2019 but there were no ongoing proceedings but instead there was a mention on 15/11/2019 without his knowledge.

That when he attended court on 14/11/2019, he was told to appear in court on 16/12/2019 and when he did so, the court forfeited his cash bail, he was placed in custody and he was denied bond; that the court has failed to take into account the reasons for his failure to appear on 14/10/2019; that his rights are violated in that he has been denied a reinstatement of his cash bail and is now remanded in custody; that he is charged with a minor traffic offence which is bailbale and that the objective of the *Bail and Bond Policy* intended that such persons should not be remanded in custody.

I have perused the lower court file and the Magistrate's order committing the applicant to custody and denying him bond till the matter is heard. *Under Article 49 (1) (h) of the Constitution*, bond is a constitutional right unless the prosecution demonstrates that there are compelling reasons not to grant an accused bond. In this case the applicant was released on cash bail. When one is released on bond, it is his duty to ensure that he attends the court as required of him. He must keep time and attend court the date given.

In this case I notice that the applicant habitually breached the bond terms. He had been given police bond to attend court for plea on 13/01/2019. He was not present in court when the session commenced. Warrant of arrest was issued for him but he arrived later at 12.10pm as per the court record. The matter was reserved for hearing on 10/06/2019, the applicant did not show up when the court started sitting. A warrant of arrest was issued but was lifted at 11.10am when he arrived. The lateness occasioned an adjournment of the case.

Again on 14/10/2019 when the matter was scheduled for hearing he did not show up. A warrant of arrest was issued again and the cash bail was forfeited.

The applicant claims that his wife was sick and that is why he failed to attend court. However, the applicant did not avail any evidence as proof of the wife's illness. The applicant claims to have come to court on 21/10/2019 on which date he was told to come on 14/11/2019 but the court was not sitting.

I have looked at the court file, indeed on 14/10/2019 when warrant of arrest was issued, the matter was given a further mention on 14/11/2019 but it seems the court did not sit on that day because there is no record of it. The court sat on 15/11/2019 when a further mention date of 16/12/2019 was given. I have no idea how the applicant got wind of the 16/12/2019 but he brought himself to court. Having brought himself to the court I believe the applicant never meant to abscond.

As pointed out earlier, the party released on bond has to ensure he attends court on time and on the actual date given. The court should not wait for such a party unless for very good reason. Besides one can not chose when he wants to come to court as the applicant seems to have been getting into the habit of doing. The court had indeed indulged the applicant and it is not surprising that the court took such a stern measure to deny him bond.

Having brought himself I think that the applicant should be given the benefit of doubt. He will not be forgiven for deciding to stay away for 2 months and the cash bail is properly forfeited. He faces a minor offence. He does not have a very good excuse for staying away for two months but he came by himself.

I will therefore set aside the lower court's order of 16/12/2019. Instead I grant the applicant more strict bond terms. He may be released on cash bail of Kshs.20,000/-. He is warned that he must attend court on time and on the date set because if he defaults this court will not come to his rescue.

It is so ordered.

Signed and Dated at *NYAHURURU* this 19th day of *December, 2019*.

R.P.V. Wendoh

JUDGE



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