



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL REVISION NO. E047 OF 2022

HARRISION KAMOKO WACHUMA.....1ST APPLICANT

DANIEL MWANGI WACHUMA.....2ND APPLICANT

-VERSUS-

ODPP.....RESPONDENT

CHRISPIN WARUMBE MUTHONI.....2ND ACCUSED

ZEITUNA HUSSEIN ALL.....4TH ACCUSED

RULING

1. The Applicants herein are Accused persons No. 1 & 3 in Maralal SPM Cr. Case No. 204 of 2019.
2. On 16th February, 2022 the trial court ordered their bonds to be cancelled and the 2 applicants to remain in custody until the matter is heard and determined.
3. The court is quoted to have stated that the “*Applicants on times without number breached the duty*” presumably by absconding and failing to appear in court for their matter in issue.
4. On account of absence in court, I noted from the record that there are only two days namely 14th December, 2021 when accused No. 1, 3, and 4 were caught up by breakdown of the motor vehicle due to mechanical breakdown issues and 1st February, 2022 when they had contracted Covid-19 and were ordered to quarantine for fourteen (14) days.
5. They appeared in court on 15th February, 2022. In both occasions the Applicants absented from attendance to court with reasons reflected on record. They say they informed court of the predicament they were in and same facts are not rebutted.
6. None of the explanations tendered by the accused persons was demonstrated to be invalid by the ODPP or the trial court.
7. As a result of the cancellation of applicants’ bonds, the instant application for revision was lodged which is based on set out grounds on the face of the application dated 21st February, 2022 and also supported by affidavit of Harrison Kamoko Wachuma sworn on 21st February, 2022 which also reiterates the same grounds.
8. The grounds are namely;

a) *The 1st and 2nd Applicants together with the 2nd and 4th Accused persons named herein were all charged in Maralal Senior Principal Magistrate's Court Case No. 204 of 2019; Republic v Harrison Kamoko Wachuma & 3 Others on or about 20th day of May, 2019.*

b) *The said accused persons were thereafter admitted to reasonable bail and/or bond terms and were released from custody after approval of their respective sureties.*

c) *The current trial Magistrate rightfully states that he took over the conduct of this matter on or about 7th day of June, 2021, in which day the 1st and 2nd Applicants and the 2nd Accused person were present and only the 4th accused person was absent thus the matter did not proceed for hearing.*

d) *It is evident that the said trial Magistrate takes judicial notice of the absence of the 1st and 2nd Applicants only on two occasions; one being when their vehicle broke down and secondly, which is material to this application when they had allegedly contracted Covid-19 and were ordered to quarantine for fourteen (14) days.*

e) *It is further evident that the 1st and 2nd Applicants on the second instance, which was on 15th day of February, 2022 they produced a letter from the County Government of Nyandarua to satisfactorily prove their assertion.*

f) *However, the trial Magistrate went ahead to have them remanded and delivered a ruling on the 16th day of February, 2022 cancelling their bond, discharging their sureties and ordering their remand for the remainder of the period of the trial.*

g) *The 1st and 2nd Applicants being aggrieved and dissatisfied with the ruling of the trial Magistrate herein invoke the provisions of inter alia Section 362 of the Criminal Procedure Code to have this Honorable court invoke its revisionary jurisdiction and review the said impugned ruling.*

h) *The 1st and 2nd Applicants contend that the trial Magistrate rightfully from the onset observe that the matter is still pending for many reasons, which the Applicants aver is the failure by the prosecution to avail witness on many occasions and numerous applications by the third parties.*

i) *It is therefore malicious, vexatious and irregular to punish the 1st and 2nd Applicants with no effort demonstrated on the part of the investigating officer to apprehend the 4th accused person who has perennially absconded court and to date has not been arraigned in court.*

j) *It is imperative to note that the 1st and 2nd Applicants were never arrested but attended court as their duty that is when they were irregularly remanded and the subsequent impugned orders were made against them.*

k) *The 1st and 2nd Applicants are entitled to a constitutional right of fair hearing which is currently under jeopardy.*

l) *There has been no inordinate and inexcusable delay in filing the instant application herein by the 1st and 2nd Applicants.*

m) *It is imperative that the orders sought be granted as prayed to arrest the continuing injustice being meted upon the 1st and 2nd Applicants.*

n) *No party will be prejudiced in the circumstance.*

9. The State via Mwendu Kavindu State Counsel has conceded application on ground that on 15th February, 2022 the Applicants offered explanation of their absence on 1st February, 2022 which was not rebutted by the ODPP.

10. The High Court has supervisory powers over the subordinate courts and Tribunals. *Section 362 of the Criminal Procedure Code* donates the power thus:

“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”.

11. *Section 367 Criminal Procedure Code* provides that:

“when a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed and the court to which the decision of order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith”.

12. *Section 362* talks of any criminal proceedings before a court. That in my view includes interlocutory proceedings applications, orders and Judgments.

13. The issues in this application arose in interlocutory proceeding upon which the trial Magistrate made an order cancelling applicants’ bond.

14. The purpose of the revisionary powers of the High Court is to correct manifest irregularities or illegalities and give appropriate directions. The court is also empowered to determine the regularity of any proceedings of any such Subordinate Court. – See *Criminal Revision No. 4 of 2019 at Machakos – Joseph Nduri Mbuvi v Republic (2019) eKLR.*

15. I have examined the record of the Criminal proceedings before the trial Magistrate. The trial Court had the discretion to decide on whether the applicant dutifully attended court as per the requirements of the bail terms. However same discretion was to be exercised judicially considering facts, laws and circumstances of the matter.

16. *Section 364 of the Criminal Procedure Code* provides that:

“(1) 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.”

17. It is therefore clear that the High Court has revisionary Jurisdiction in the circumstances of this case.

18. It is evident that the said trial Magistrate took judicial notice of the absence of the 1st and 2nd Applicants only on two occasions; one being when their vehicle broke down and secondly, which is material to this application when they had allegedly contracted Covid-19 and were ordered to quarantine for fourteen (14) days.

19. It is further evident that the 1st and 2nd Applicants on the second instance, upon appearance in court, on 15th day of February, 2022 they produced a letter from the County Government of Nyandarua to satisfactorily prove their assertion.

20. However, the trial Magistrate went ahead to have them remanded and delivered a ruling on the 16th day of February, 2022 cancelling their bond, discharging their sureties and ordering that they be remanded for the remainder of the period of the trial.

21. The occasions they were absent with attendant reasons is not and cannot amount to time without number.

22. *Article 165(6) of the Constitution* states that the High Court has supervisory jurisdiction over Subordinate Courts to make any order or give any direction it considers appropriate to ensure the fair administration of justice. The ruling by the trial court cancelling the applicants’ bond impugned is in the circumstances unjust and manifestly unfair and cannot stand.

23. In the Circumstances of this instant application, it is my view that the remedy available to the applicants lies in revision, as clearly stated by cited provisions of the law above.

24. Thus, the court makes the orders that;

(i) Prayers no 3 and 4 of the application dated 21st February, 2022 are granted.

DATED AND SIGNED AT NYAHURURU THIS 14TH DAY OF MARCH, 2022.

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CHARLES KARIUKI

JUDGE



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