THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

CRIMINAL REVISION NO. 0002/2013
(Arising from SOR-02-CO-246-2011)
(MCB 188/2011)

UGANDA.……..……APPLICANT
VERSUS
APURU SAMWIRI……. ……..……..RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

REVISION ORDER

On 26.4.2012 when the original case came up for hearing before the trial Magistrate both the accused person **Apuru Samwiri** and his surety **Opedun** were not in court. The case was coming up for defence.

The prosecutor **Mugya Robert** applied for a warrant of arrest for the accused persons and Criminal Summons for his surety.

Court agreed and ordered accordingly and adjourned the case to 10th May 2012. However on the adjourned date neither the accused nor the surety were in court. At the instance of the prosecution, a warrant of arrest was issued for both the accused and surety for 25.5.2012.

Before that date, the two were produced in court on 18.5.2012. On that date, prosecution applied to have the accused's bail cancelled and asked court to order

the accused to look for another surety if bail is to be considered again. He also asked court to order forfeiture of the bond of the surety.
Both the accused and his surety were given chance to explain their omissions.

In its ruling court was not convinced by the explanations of both the accused and his surety. Bail was cancelled and the surety **Opedun** was ordered to forfeit the bond of 1,000,000/= failure of which he would be committed to prison for six months.

The right of Appeal was explained to the surety under S.84 MCA.

The surety paid the 1,000,000/= and was released.

Following a complaint to the Inspector of Courts, it was proposed that this court revises the proceedings and orders of the trial court.

I sought the views of the Director Public Prosecutions before making any order in revision. He opined that the court was entitled to disqualify the surety if it felt he was not doing his work. However the DPP did not find any legal justification for the forfeiture of the recognizance where the surety produced the accused in court.

From the summary of the chronology of events outlined above, it is not true that the surety produced the accused. Both were arrested and produced in court. In the circumstances, I am unable to fault the actions of the trial Magistrate for the steps he took to make the orders he made. He acted within his jurisdiction and if any of the parties was dissatisfied, then an appeal would have been a better option than seeking a revision order.

Under S.48 of the Criminal Procedure Code,

> "*The High Court may call for and examine the record of any criminal proceedings before any Magistrate's Court for the purpose of satisfying itself as to the correctness, legality and propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Magistrate's Court.*"

The learned trial Magistrate is empowered under the law to do what he did in case of bail default. What could have raised the discontent was the excessive bail conditions which were initially fixed by another Magistrate other than the one who ordered the forfeiture. This however cannot be remedied in revision. It ought to have been challenged earlier before the parties undertook to abide.

Consequently I will make no order in revision.

Stephen Musota

JUDGE

30.05.2013