

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO 721 OF 1977

CHARLES ALWANDO OPONDOAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

After referring to *R v Sumboso s/o Ruhinda* (1948) 15 EACA 99 and *Thairu s/o Muhoro v R* (1954) 21 EACA 187, it was stated that the only possible inference from the facts was that the appellant had stolen money.

His lordship added that the recall of witnesses for cross-examination was essentially a matter within the discretion of the trial judge and that the magistrate had correctly exercised his discretion. His Lordship then continued: And we turn to the final ground of appeal, that the magistrate displayed bias in cancelling the appellant's bond before the trial ended.

When the prosecution closed its case, the magistrate resolved to cancel the appellant's bond and remand him in custody. He has recorded: "After the end of the prosecution case Court found accuseds had case to answer.

This prompted [the appellant's] bond to be cancelled". He may have taken the view that, having found that each of the accused had a case to answer, he was required to cancel the appellant's bond (the other accused was in remand); but, if that is so, he has misunderstood the situation. A Court does not have to cancel an accused's bond simply because the point in a trial has been reached where a *prima facie* case has been made out. But what the magistrate did exhibits no bias to us.

We know of no local decision, no practice direction, concerning bail during trial in a Magistrate's Court, and the matter being of general importance we express the view (guided by *Practice Direction Crime: Bail during Trial*) [1974] 1 WLR 770 issued by the English Court of Appeal of 4th June 1974) that, once a trial has begun, the further grant of bail is in the discretion of the trial magistrate. But an accused who has been on bail while on remand should not be refused bail during the trial, unless in the opinion of the magistrate there are positive reasons to justify this refusal, eg that a point has been reached where there is a real danger that the accused will abscond, either because the case against him is going badly for him, or for some other reason, or there is a real danger that he may interfere with witnesses. There is no rule of practice that bail shall not be renewed when a *prima facie* case has been established against an accused; but every case must be decided in the light of its own circumstances and having regard to the magistrate's assessment from time to time of the risks involved. Once the magistrate has convicted an accused, the further renewal of bail where a custodial sentence is a likely consequence, should be regarded as exceptional.

Appeal dismissed.

Dated and delivered at Nairobi this 16th February 1978.

E. TREVELYAN

J.H.S TODD

JUDGE

JUDGE