



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION CASE NO. 269 OF 2019

GAYO GORSA BORU.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

RULING

The applicant herein, **GUYO GORSA BURU**, has moved this court by way of a certificate of urgency and letter both dated 7.12.2020 and filed same herein on the same date. He prays that this court do admit the accused to bail. In the certificate of Urgency and the accompanying letter, the applicant has stated that his earlier application had been dismissed on 22.7.2020 by the Hon. Justice Luka Kimaru with a rider that the applicant was at liberty to reapply before the High Court if the prosecution case was not included within 3 months from the date of 22.7.2020.

The Respondent has filed a Preliminary Objection to this application. It became imperative that this court do handle the question of the Preliminary objection first since it touched and or challenged the Jurisdiction of this court.

Mr. Ondimu for the state argued the Preliminary objection that this same matter had been ruled on by the Hon. Justice Kimaru on 22.7.2020 and was conclusively determined. That the leeway was for the applicant to file another application which he has failed to do. He urged that this application be dismissed for lacking in merit.

In response to the Preliminary Objection, Mr. Chacha Mwitw, only submitted that they have complied with the said orders of Justice Kimaru who gave the applicant the liberty to re-apply.

I have considered the two rival submissions of the parties herein. I have also carefully considered the Ruling of the Honourable Justice Kimaru delivered on 22.7.2020 and the records of the proceedings herein. The applicant first moved this court by way of a Certificate of Urgency and letter both filed on 23.10.2010. the same sought orders of revision of the lower court's orders denying the accused bail. The same were registered as High Court Criminal Revision Case Number 269 of 2019. That is the matter placed before the Hon. Justice Kimaru, and on which the Honourable Judge made the ruling 22.7.2020.

In the said ruling at the last paragraph, the Honourable Judge ordered in part as follows:-

“In the premises therefore, the application lacks merit and is hereby dismissed. The prosecution is ordered to present their witnesses before the trial court and close its case within 3 months of today’s date, failure of which the applicant shall be at liberty to re-apply before this court to be released on bail pending trial. This order shall only apply if the applicant does not apply to adjourn the hearing when the case is listed for trial. The Deputy Registrar of this court shall notify the trial court of this court’s direction.....”

It is clear from the above finding that the application before the court, being Revision No. 269/2019 was dismissed. In my view, the effect of this would be that the whole matter before the court was determined and the file would accordingly remain closed. The order to re-apply would therefore not apply to a closed file. this application for bail cannot therefore be filed in a file that had been determined and closed. It is for this reason that. I find merit in the preliminary objection raised by the respondent herein. I sustain the said objection and find that the application of the applicant dated and filed herein on 7.12.2020 totally lacks merit. I dismiss the same. Orders accordingly.

D. O. OGEMBO

JUDGE

26.2.2021

Court:

Ruling read out in open court in presence of Mr. Ondimu for DPP who has also confirmed instructions from Mr. Chacha Mwita for accused.

D. O. OGEMBO

JUDGE

26.2.2021