



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CRIMINAL APPL. CASE NO. E276 OF 2020

HARRISON MUGO MOSES.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....STATE

RULING

The applicant, HARRISON MUGO MOSES, filed this application dated 9.11.2020 on 12.11.2020. The application seeks one substantive prayer. That the applicant be forthwith transferred from Manyani prison in Taita Taveta to Kamiti Maximum prison as per his Judgment that directed that he be held at Kamiti Maximum Prison to await the order of the president. The application is supported by the Affidavit of one Ziporah Nyambura Kamau, sister of the applicant.

In moving the motion, Mrs. Kerio, counsel for the applicant, submitted that in the Judgement, the court had ordered that the applicant be held at Kamiti Maximum prison to await the order of the president. That he was held at Kamiti till 2019 he was transferred without any order to that affect. It was submitted that the applicant has mental issues and need to be seen by his doctors.

Ms. Kibathi for the state opposed this application. That under section 166 of the Criminal Procedure Code, the power to determine the place of detention with regard to mentally challenged persons lie with the president who directs the cabinet secretary who is turns directs the commissioner of prisons. That an aggrieved party can only apply to the president through the cabinet secretary, a process the applicant has not exhausted.

That the applicant can only approach the court by way of Judicial Review application. And that in fact there are psychiatrists at Manyani prison.

I have considered the submissions of both the applicant and respondent's sides. This application is basically under section 166(2) of the criminal Procedure Code, which states:

“When a special finding is so made, the court shall report the case for the order of the president, and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct.”

I have considered the judgement of the Hon. Justice S. N. Mutuku, attached to this application. The judge noted that the applicant was legally insane at the time he committed the act. The Judge went on to order.

“I order that the accused shall be held at Kamiti Maximum Prison to await the order of the president. This court shall proceed to make a report in that regard.”

There is no evidence placed before this court to show that the president has acted and or issued any order as to where the applicant is to be detained. In the absence of any such order of the president, and or pending the issuance of any such order, the order of this court that the applicant be held at Kamiti Maximum Prison ought to be and must be regarded as the substantive direction on where the applicant is to be held. The transfer of the applicant to Manyani Prison therefore, clearly goes against the orders of this court.

In the circumstances, I find merit in the application of the applicant and allow the same, and order that the Commissioner General of Prisons do transfer the applicant, Harrison Mugo Moses from Manyani Prison Taita Taveta, to Kamiti Maximum prison as per the Judgment of this court in High Court Criminal Case No. 98 of 2011. Orders accordingly.

D. O. OGEMBO

JUDGE

23.2.2021

Court:

Ruling read out in open court (online) in presence of Ms. Kimani holding brief for Mutuma for the state, Ms. Kerio for the applicant state and the applicant, online from Manyani Prison.

D. O. OGEMBO

JUDGE

23.2.2021