

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. E149 OF 2021

ODPP.....APPELLANT

VERSUS

PRINCIPAL MAGISTRATE SHANZU.....RESPONDENT

(Being an appeal against the Ruling passed by Hon. Y. A. Shikanda on 2nd June, 2021 in Shanzu Magistrate's Court Misc. Case No. E057 of 2021)

RULING

1. By a letter dated 30th June, 2021 the office of Director of Public Prosecutions wrote to the court seeking that Shanzu Court Miscellaneous Criminal application No. E057 of 2021 be placed before this court to revise order made therein dismissing application to exhume the body of MSA 5 years old who died under unclear circumstances and was buried on 16th May, 2021 as per Islamic Customs.

2. The Magistrate at Shanzu Court dismissed the application on the grounds that he didn't have jurisdiction to order for exhumation where he is not holding an inquest as to the cause of death.

3. I have considered the application for revision of orders made by Hon. Shikanda Principal Magistrate at Shanzu Law Courts on 2nd June, 2021 and find that to serve justice of the day the order by trial magistrate is hereby set aside and substituted with order to exhume the body as applied to in the Miscellaneous Application before the Magistrate's court. The interpretation of Section 146 of the public Health Act by the Magistrate was erroneous. The applicants have sought for exhumation for purposes of inquiring into the cause of death of the 5 year old child and an inquest can't be held without a post mortem being carried out to establish such cause of death.

DATED, SIGNED AND DELIVERED IN OPEN COURT /ONLINE THROUGH MS TEAMS, THIS 29TH DAY OF JULY, 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel – Court assistant

Ms. Karanja for Applicant

Ms. Aroka watching brief for deceased family

HON. LADY JUSTICE A. ONG'INJO

JUDGE