

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL MISC. APPLICATION CASE NO. 165 OF 2020

WINNIE JEBICHI KOECH.....APPLICANT

CAROLINE CHEMTAHI KOECH.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

STANDARD CHARTERED BANK OF KENYARESPONDENT

RULING

I have considered the submissions of all the parties herein, particularly on the plea by the interested party to have the deponent of the supporting affidavit, who is counsel for the applicant, to be cross-examined on the affidavit. That the affidavit raises new issues of fact necessitating cross examination of the deponent. This is an application seeking a revision of the orders of the lower court.

Under section 362 of the Criminal Procedure Code, Cap 25, the powers of this court to revise the orders of the lower court are meant to correct any error or impropriety in the lower courts orders. It is not to consider new facts that were not before the lower court. Such matters of facts can only be dealt with by the trial court.

To that extent, this court shall not consider any new matters of facts that may be raised by the applicant in the supporting affidavit. I so find. The application made by the interested party was based on the fear that new facts may be considered in this application. With the finding that no such new facts would be canvassed in this application, it follows that there is no remaining basis for the cross examination sought. I order therefore that this application to proceed by way of submissions.

Since the respondent is not ready to proceed, the application is adjourned of hearing date to be fixed. Hearing 6.10.2020

HON. JUSTICE D. OGEMBO OGOLA

30.9.2020