



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CRIMINAL APPLICATION NO. E195 OF 2020

LESIT J

ERIC RAMANZANI ABDALLA..... APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal for bail arising from the Ruling of the Chief Magistrate's Court at JKIA (Hon. L. O. Onyina (CM) dated 9th December, 2019)

RULING ON BAIL

1. The application before this court is a **Notice of Motion** dated 26th June 2020. It has been brought under **Article 49(1)(h)** of the **Constitution** and **section 123** of the **Criminal Procedure Code**. It seeks to have the Applicant admitted to bail.
2. The Applicant Erick Ramanzani Abdalla is facing a charge of **conspiracy to commit a felony** contrary to **section 393** of the **Penal Code** before the Chief Magistrate's Court at JKIA.
3. The Applicant applied for bail in the lower court at JKIA but the same was denied. He has filed a fresh application for bail in this court.
4. Ms. Shumila for the Applicant in her submission urged that the Applicant was denied bail by the lower court despite his co-accused being granted bail. That the Applicant is married to a Kenyan and has a young child aged 5 years. Counsel urged the court to consider that the Applicant suffers from Diabetes Mellitus, a condition that requires medication constantly and that his immunity is compromised due to the current Covid-19 pandemic.
5. When the matter came up for hearing, learned counsel for the State Ms Nyauncho took objection to this court hearing the application. Counsel urged that earlier, the Applicant made a similar application before the High Court seeking to challenge the decision of the lower court to deny the Applicant bail.
6. Ms. Nyauncho urged that the matter was before Hon. Kimaru, J who upheld the decision of the lower court to deny the Applicant bail vide High Court Misc. Criminal Application No. 81 of 2020. Counsel urged that the ruling was delivered on 5th March 2020.
7. Ms Nyauncho further submitted that the Applicant should approach the Court of Appeal as this court has pronounced itself on the matter therefore the application is in abuse of the court process.
8. In response Ms. Shumilla urged that her firm was not on record for the Applicant and were unaware that he had already made a similar application to this court. Counsel urged the court to still consider the application.
9. I have considered the submissions by both the prosecution and the defence counsels. The State has objected to this court entertaining the application on the basis it is *functus officio*, on grounds the Applicant has come back to this court a second time. What does it mean to say court is *functus officio*?
10. The **Supreme Court in Election Petition Nos. 3, 4 and 5 Raila Odinga & others vs. IEBC & others [2013] eKLR**, cited an excerpt from an Article, *'The Origins Of The Functus Officio Doctrine, With Specific Reference To Its Application To Administrative Law'* by Daniel Malan Pretorius which reads:-

“The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter...The[principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”

11. The court of appeal in Telkom Kenya Limited v John Ochanda [2014] eKLR held that:

“*functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon”.

12. The application before me was heard by Kimaru, J. a court of competent and similar jurisdiction as this court. This has not been disputed. A ruling was delivered to the Applicant. That means that this court has heard and made a determination in this same matter. The court is therefore *functus officio*.

13. The matter itself is *res judicata*. The court cannot adjudicate on a matter a second time unless there has been some development in the case to cause the application to raise different issues that would warrant the court to consider them. For instance, if the matter in the lower court has taken a new direction and the application for bail made afresh before it. From the submissions by Ms. Shumilla, there is nothing new in this matter, and there has been no new development in the case before the lower court.

14. In the result, this application is incompetent and the same is struck out with no order as to costs.

DELIVERED THROUGH TEAMS THIS 21ST DAY OF SEPTEMBER 2020

LESIT, J.

JUDGE

21ST SEPTEMBER, 2020

In the presence of:

Gitonga	Court Assistant
N/A Ms. Shumilla	For the Applicant
Ms. Gichuhi h/b for Ms. Nyauncho	For the State/Respondent

Applicant present

LESIT, J.

JUDGE

ORDER

The original file for CM’s Court, JKIA, Criminal Case No. 166 of 2019

be returned to that court for the matter to be heard to its logical conclusion.

LESIT, J.

JUDGE.

21/09/2020