

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

REVISION CASE NO. 4 OF 2018

FRANCIS INGOSI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. On 14th February, 2018, the applicant filed a Notice of Motion dated 12th February, 2018 seeking revision of his bond terms; on the ground that the bond terms granted by the trial court were oppressive and a violation of the applicant’s fundamental and constitutional rights. The applicant also swore an affidavit in which he reiterated the grounds on the face of the application.

2. Upon due consideration of the application, this court rendered its ruling on 2nd May, 2018 rejecting the application for review. An order was also made to return the original file to Mumias Principal Magistrate’s court with directions to that court to expedite delivery of judgment in order to prevent the applicant from staying in remand for long.

3. Yesterday, 22nd May, 2018 the applicant filed another application under certificate of urgency asking this court to review its ruling rendered on 2nd May, 2018 on grounds that there was another order made by Hon. Mr. Justice J. Njagi on 11th October, 2017 arresting judgment in Mumias Principal Magistrate criminal case No. 949 of 2011 pending the hearing and determination of petition No. 12 of 2017. The applicant alleges that the two orders issued by the High court are conflicting and not in the interest of justice. In the mind of the applicant, there is an error apparent on the face of the record.

4. The application is opposed Mr. Ngetich for the state submitted that the applicant’s application is mischievous and is an abuse of the process of the court and is made in bad faith. Further, that the applicant has not given any cogent reason why the judgment should be arrested. Counsel urged the court to dismiss the application.

5. I have now carefully considered the application as filed and the submissions made. While noting that the applicant is being mischievous in litigating his matter piecemeal, I note that there is an order of this court arresting the delivery of judgement in Mumias SMP Criminal Case No.; 949 of 2011. Republic – vs- Joseph Mukabana Ngoche and Francis Kaburu Ingosi pending determination of the petition. If this court had been made aware of the said order when it wrote its ruling of 2nd May, 2018, the direction to the trial court to deliver judgment by 31st May, 2018 would not have been made.

6. In the circumstances, the court’s ruling dated 2nd May, 2018 and particularly paragraph 2 thereof is revised by deleting therefrom the second sentence of that paragraph from the words “what I can say”to “before 31.05.2018”

It is so ordered

Ruling delivered dated and signed in open court at Kakamega this 23rd day of May, 2018

RUTH N. SITATI

JUDGE

In the presence of:-

.....Mr. manyonifor Applicant

.....Mr. Ngetich.....for Respondent

.....Polycap.....court Assistant