



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

MISC CRIMINAL APPLICATION NO. 5 OF 2021

FRED NDIGWA NUNDA.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS.....2ND RESPONDENT

INSPECTOR OF GENERAL OF POLICE.....3RD RESPONDENT

RULING

1. Fred Ndigwa Nunda hereinafter referred to as the applicant seeks in his motion dated 30th September 2021 the following orders;

i. That the court review and or revise criminal cases nos.

Kisii cm's criminal case no. 1693 of 2019

Kisii cm's criminal case no. 2829 of 2019

Kisii cm's criminal case no. 1165 of 2020

Kisii cm's criminal case no. 1161 of 2020

Kisii cm's criminal case no. 1144 of 2020

ii. That the court be pleased to order that the accused/ applicant be released on previous bond terms and or terms that are just in order to receive medical attention in a hospital facility of his choice

iii. That costs be in the cause.

2. The application is grounded on the supporting affidavit of the applicant and grounds stated on the face of the application. He depones in his affidavit that he made an application and the court made an order that he be accorded medical treatment and where necessary he be taken to for specialist treatment outside of prison. That the order was served on Kisii Prisons who immediately transferred him to Kodiaga Prisons ostensibly for treatment. That at Kodiaga prisons he was not afforded any treatment until Doctor Odhiambo recommended the surgery be done at his home county. That he seeks to be released on bond in all matters in which he is charged on the bond terms which he was previously given. That he undertakes to attend court at all times. That the manner in which he was shot is completely inhumane.

3. At the hearing of the applicant Mr.Kerosi for the applicant reiterated what is deponed in the applicant adding that the applicant has several cases in court and that when the police went to arrest him they shot and maimed him seriously. That the applicant is not a convict and should benefit from the provisions of Article 49 of the Constitution. That he is not a flight risk, as he has always come to court. That they asked the court to lift the warrant of arrest but he has met hurdles in the various courts. That the applicant might die whilst in prison and that his life is in danger. That the court should inquire why the prisons officials refused to obey the court order.

4. The application was opposed. Mr Kaino in response submitted the applicant is facing different charges in 5 different courts here in Kisii. That just before the application the applicant was arrested by DCI officers. That there are warrants of arrests issued in all the files. The applicant broke the bond terms and warrants were issued. That the application is not made in good faith. That the issue of warrants should be

addressed in the various courts and if he is aggrieved he shall have recourse to the High Court. That in his application he has not stated if the matter is an appeal or a review. That the applicant's ill health is not related to the issue of his bond terms. The prisons have medical facilities. That making blanket applications is not proper and that the application should be dismissed as it is an abuse of the court process.

5. Mr. Kerosi in response argued that the prosecution have no affidavit in response and that the applicant has an injured leg that is rotting. That they have gone severally to lift the warrants and that the files are available.

6. The application by the applicant is for review and or revise criminal cases indicated at paragraphs b of the motion. The applicant apart from citing the cases has not demonstrated the orders to be reviewed or revised in each case. It is not the duty of this court to peruse each case to find out what happened in each case. The applicant application is a blanket application. Articles 19, 20,22,23,28.29 and 49 have been cited with no content to support them in the applicant's affidavit. I agree with the prosecution that the applicant should have made the relevant applications before each court before moving to the High Court. Section 364 empowers the High Court to make orders of revision. The order or orders to be revised must be clearly stated. The applicant appears to be seeking an order to be taken for treatment or be released for treatment but the order that caused his warrant has not been specifically challenged. In my view the application lacks merit. The lower court files shall be returned to the specific courts for hearing and determination. The application is dismissed.

Dated, Signed and Delivered at KISII on the 17th day of November 2021.

R. E. OUGO

JUDGE

In the presence of:

Applicant Absent

Mr. Kerosi For the Applicant

Mr. Kaino State Counsel ODPP

Ms. Rael Court Assistant