



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC CRIMINAL APPLICATION NO E003 OF 2021

MUTHURI M'MBIJIWE MUGUONGO.....ACCUSED/APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR/RESPONDENT

(An application arising from the Chief Magistrate's Court at Nairobi

in Criminal Case No. 206 of 2016, Republic v Muthuri M'mbijiwe Muguongo)

RULING

The accused applied under certificate of urgency for the following order.

1. An order to dismiss charges of obtaining by false pretences contrary to section 313 of the Penal Code (Cap 63) Laws of Kenya which are pending against him in the lower court.

The application is supported by 10 grounds that are set out on the face of the notice of motion, with the following being the major grounds.

The applicant has been in remand for a period of 17 months and the case has never proceeded because the police file has never been availed in court. The trial magistrate has always insisted that the hearing proceeds but has been granting adjournments.

He has further stated that: "Considering the time I have spent in prison and the sentence the offence carries, they are almost the same."

He has therefore made this application so that the trial should be stopped since the time he has spent in prison is almost the same as the sentence the offences charged with carry.

The applicant has reproduced the same grounds in support of his notice of motion in his affidavit, which I find unnecessary to replicate herein.

During the oral hearing of this application the applicant submitted that he has been in remand for three years and the case has never taken off. And the offences carry three years imprisonment and it is for that reason that he has applied to this court to dismiss the charges against him.

The prosecuting counsel (Mr. Kibathi) opposed the application and submitted that this application ought to have been made in the trial court. He therefore applied that the case be sent back to the trial court for that purpose.

In response the applicant agreed that the case should be sent back to the trial court.

I have considered the application. I find that this application ought first to have been made to the trial court; which would then rule on the issue.

It should be remembered this court is allowed to revise orders made by the trial courts and to hear appeals from those courts. The application made is not one of those matters that are fit for consideration by this court.

In the premises, I find that the application is premature and incompetent and is hereby struck out.

RULING SIGNED, DATED AND DELIVERED THROUGH VIDEO CONFERENCE IN OPEN COURT AT NAIROBI THIS 7TH DAY OF DECEMBER 2021.

J. M. BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua, court assistant

The applicant

Mr. Naulikha for the Respondent

Ruling signed, dated and delivered in open court conference at

Nairobi this 7th day of December 2021.