



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. APPLICATION NO. 39 OF 2015
FEISAL MOHAMED ALI alias FEISAL SHABAL.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

RULING

This undated Notice of Motion application is premised under article 22 as read with article 165(3)(d) of the Constitution. It is deemed to be an appeal against the ruling of Honourable Kituku – Principal Magistrate delivered on 9th January, 2015.

In the said ruling he declined to grant the applicant bond.

He did not proceed with the appeal but instead brought a fresh application in the same trial Court and the application for bond was allowed. This prompted the state to file a revision against the ruling admitting the Accused to bond.

In that revision application the issue as to whether the Accused was a flight risk was canvassed and was fully determined.

The issue of the Accused health was also raised and the Court made a determination on it. All the issues raised in this application were argued before me and I made a determination on them. To revisit the same issues again would be tantamount to (1) presiding on a review of my ruling when the Court has not been invited to find that there are new circumstances obtaining that were not available at the time to the applicant and that failure to discover those facts was not because or due to his fault and this would be improper.

(2) To revisit the same issues afresh would be tantamount to sitting on appeal on my ruling and any determination contrary to my earlier finding would be embarrassing.

This appeal was filed on 20th January, 2015. There is no application for extension of time. It is brought more than a half a year later ago. That duration of delay is inordinate and unexplainable.

The application has no merit and its dismissed.

Ruling delivered dated and signed this **9th** day of **July, 2015**.

.....

M. MUYA

JUDGE

9TH JULY, 2015.

In the presence of:-

Counsel for the prosecutio Mr. Muteti

Counsel for defence Nabwana

Court Assistant Mr. Musundi

M. MUYA – JUDGE

Mr. Nabwana:

In view of the Courts ruling I would urge that a direction be given that hearing date be given for the hearing.

Mr. Muteti:

Thats a matter for the discretion of the lower Court.

Court:

Case has a hearing for two days starting from today at the lower Court. Same to proceed as scheduled. Certified copies of the ruling to be furnished to both parties.

.....

M. MUYA

JUDGE

9TH JULY, 2015