



**Republic v Dangwali (Criminal Case 48 of 2017)  
[2024] KEHC 15225 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15225 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 48 OF 2017**

**AC BETT, J**

**NOVEMBER 28, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**VINCENT MUHAVI DANGWALI ..... ACCUSED**

**RULING**

1. The Accused Vincent Muhavi Dangwali was arraigned in court on 22<sup>nd</sup> November 2017 and charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The offence was stated to have been committed in Gamoi Village, Gisambai Location, Vihiga County.
2. The case is part heard. When the case first came up for hearing on 28<sup>th</sup> May 2018, five witnesses were present. The matter however, could not proceed due to absence of the Accused’s Counsel, who was said to be ill. An order of refund of Kshs. 600/= each was made in favour of the witnesses. Thereafter, four witnesses testified.
3. On 17<sup>th</sup> July 2019, the matter was consolidated with Criminal Case No. 1 of 2019 and directions were therefore issued that the matter do start de novo. The hearing of the matter was subsequently affected by the Covid 19 pandemic and therefore the same came up for mention severally until 26<sup>th</sup> September 2022, when upon the Prosecution receiving information that the 1<sup>st</sup> Accused was deceased, a fresh information was substituted whereupon the court fixed the matter for case conference on 14<sup>th</sup> November 2022. On the said date, the prosecution, applied to terminate the case against the 2<sup>nd</sup> Accused who was said to have been killed by members of the public on 21<sup>st</sup> March 2022. A further fresh information was therefore filed again and once the Accused pleaded not guilty to the charges, the court scheduled the matter for hearing on 15<sup>th</sup> February 2022.
4. On 15<sup>th</sup> February 2022, the file was placed before a different Judge who directed that the matter be fixed for hearing on 9<sup>th</sup> May 2023 before the Judge assigned to hear the case. On the day fixed for hearing,



the prosecution said they were not ready to proceed. With no objection from the Accused person's Counsel, the court granted an adjournment but stated that it was a last adjournment since the case was old. The prosecution was ordered to avail all its witnesses on 19<sup>th</sup> September 2023 for hearing. On that date, the Accused person's Counsel was absent and so the case was adjourned to 7<sup>th</sup> December 2023, by which date the trial Judge was away on official duty.

5. On 9<sup>th</sup> July 2024, this matter came before me. The prosecution applied for an adjournment on the ground that the two witnesses were deceased and three were said to have relocated and time was needed for the investigating officer to trace them. The Accused person's Advocate did not object to the adjournment and at the instance of the prosecution, the court ordered summons to issue to seven witnesses to appear in court on 5<sup>th</sup> November 2024.
6. On the 5<sup>th</sup> November 2024 the prosecution expressed frustration at procuring the witnesses from Vihiga where they reside to attend court in Kakamega. She therefore applied for transfer. The Accused, whose Advocate was not in court stated that he had no objection. While the court was pondering on the application, the Accused person's Advocate Mr. Matete, walked in and vehemently opposed the application on the grounds that this is a 2017 matter and the witnesses have not been attending court.
7. I have carefully considered the application and the entire circumstances of the case. This is a case that has an unfortunate history. Two Accused persons have died during the pendency of the case. The case never proceeded after the consolidation for various reasons not only related to the absence of the witnesses. As it stands now, the case has never taken off since the court ordered that it starts de novo.
8. It is my considered opinion that the application for transfer is a desperate ploy by the Prosecution to salvage its case. The Prosecution is reliant on the investigating officer to procure the State witnesses and ensure that they attend court. The procurement of witnesses includes tracing the witnesses, appraising oneself of their location and bonding them to attend court. Despite being given a last adjournment on 9<sup>th</sup> May 2023, there appears to have been no effort to trace the witnesses. One and a half years down the line, the Prosecution claims that the witnesses could not be traced as two are said to have relocated. I am left with the impression that the investigating officer has not been diligent in handling this matter. Although he claimed that the witnesses relocated, he did not have any idea as to where they currently are. If it is true that the witnesses relocated, then transferring the file to Vihiga High Court will not resolve the issue of their distance.
9. The court has a duty to balance the rights of the Accused persons with rights of the victims and with public interest. This case has been pending since the year 2017. The Accused has a right to a speedy trial as contemplated by Article 50 (1) (e) of the *Constitution*. As much as the Prosecution spiritedly tried to ensure that this case continues, the application to transfer the matter to Vihiga at this late stage is not tenable. It has been made after an inordinate delay and will likely lead to further delay. It is in the interest of justice that this matter is heard and determined in this court.
10. For the reasons stated above, the application for transfer of this case is declined. I do order that the matter do proceed in this court.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 28<sup>TH</sup> DAY OF NOVEMBER 2024.**

**A. C. BETT**

**JUDGE**

In the presence of:-

Accused in person



Mr. Adeka holding brief for Mr. Matete for the Accused

Court Assistant: Polycap

