



REPUBLIC OF KENYA



State v COK (Criminal Case 9 of 2014) [2023] KEHC 975 (KLR) (21 February 2023) (Ruling)

Neutral citation: [2023] KEHC 975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 9 OF 2014
RE ABURILI, J
FEBRUARY 21, 2023**

BETWEEN

STATE PROSECUTION

AND

COK ACCUSED

RULING

1. This matter was initiated before this court on February 3, 2014. However, the accused person could not take Plea due to mental illness and was committed to Mathare Hospital vide Order of April 30, 2014 by Muchelule J as per the mental assessment report dated April 8, 2014.
2. Later, on February 25, 2015, a year later, a report was filed into court to the effect that the accused was now well and could take plea. However, he continued labouring under mental illness and another Order was made for psychiatric treatment. Later, the accused was able to recover and a Plea was taken on February 5, 2019.
3. There are several applications for adjournment on record, made by the Prosecution on account that they were unable to trace witnesses, since 2019. The court grudgingly allowed those adjournments.
4. The proposal for Plea bargain was only made on May 11, 2021. In addition, as correctly submitted by Miss Ayieta counsel for the accused person, the Prosecution intimated that they would review their decision to charge the accused and the court on October 13, 2021 fixed the case for mention on November 10, 2021 when a different Prosecutor attended court saying the State was withdrawing the charge.
5. The case was then fixed for hearing on February 15, 2022 on which date, the ODPP was not ready to proceed because they had visitors in the office. The hearing was adjourned to June 21, 2022 and on the latter date, Ms. Odumba Prosecution Counsel again sought an adjournment on account of lack of witnesses.



6. This is how this matter reached my desk on October 19, 2022 upon which the Prosecution Ms Chausiku prosecution Counsel holding brief for Ms Odumba sought for a date for a report on whether the accused wishes to continue with Plea bargain request. This issue of Plea bargain was being brought up 3 years later from 2019.
7. On December 13, 2023 neither the Prosecution counsel nor Defence counsel were present and that is when I fixed the case for hearing today, 2 months ago.
8. I observe that Police Constable Alex Agamu swore an affidavit on June 26, 2022 indicating that he was the investigating officer who was unable to get the witnesses to court.
9. The accused was on January 2019 adjudged fit to stand trial and the Prosecution intimated to court on June 17, 2019 that they wished to continue with the Prosecution of the accused. However, not a single witness has ever attended court on any occasion to testify against the accused.
10. Whereas the accused was sick from 2014 upon arrest to 2019 when he was released from hospital upon recovering, I find no reason why he is still being held in custody if the Prosecution have on several occasions indicted their inability to trace to witnesses and this is not unusual as the alleged offence took place in 2014 and witnesses have since changed their abode.
11. I do not agree with Mr Okoth Senior Principal Prosecution Counsel that because he is new or that because the OCS Kisumu Police Station is new, then they shall employ any new or better mechanisms of tracing those witnesses. The accused deserves a speedy trial as stipulated under Article 50(2) (e) of the *Constitution* and any further delay now, from 2019, indeed is a violation of his right to fair trial since the Prosecution are gambling with the issue of witnesses not being traced. For the above reasons, I find the application for adjournment not merited. The same is hereby declined. The Prosecution to proceed.
12. I so order.

Dated, signed and Delivered at Kisumu this 21st Day of February, 2023

R.E. ABURILI

JUDGE

