



Republic v Mrefu (Criminal Case 15 of 2019) [2022] KEHC 11274 (KLR) (30 May 2022) (Ruling)

Neutral citation: [2022] KEHC 11274 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL CASE 15 OF 2019**

F GIKONYO, J

MAY 30, 2022

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER MBARIA AKA MREFU ACCUSED

RULING

1. On March 22, 2022 Mr. Korir for the accused proposed that the matter starts de novo. That witnesses are available and there will be no prejudice to the prosecution and victims. Mr. Ondimu, prosecution counsel objected to the matter starting de novo. He argued that two witnesses had already testified. The said witnesses were his fellow inmates and have spent time with accused person. Therefore, there is no guarantee their testimonies have not been interfered with by the accused. He further argued that the accused was represented by an able legal counsel who cross examined the said witnesses. Therefore, the right under section 200 of the CPC is not automatic.
2. In a rejoinder, Korir argued that no evidence of interference with witnesses in prison as inmates are separated; those in remand and those serving jail term. That the accused had been on the remand section and the witnesses were on that for those serving jail term.

Analysis And Determination

3. I have carefully considered the typed proceedings of my predecessors and arguments put forward by the counsel for parties herein. I have also considered the record of the trial court.
4. Is this request for matter to start de novo misplaced?
5. I will consult the record.
6. Two witnesses had already testified before Bwonwong'a J on May 28, 2018. The following day, on May 29, 2018, the case was then transferred to the High court at Naivasha on the request of the accused on concerns of his security at Narok prison.



7. On October 31, 2018 Mr. Mburu who appeared for the accused stated that the accused wishes the case to start de novo. Koima for the state indicated that the prosecution had no objection to the starting de novo. R. Mwongo J then ordered that the matter shall start de novo and the matter was set down for hearing on March 7, 2019.
8. Before the matter could be heard at Naivasha the accused sought to have the matter transferred to Narok claiming that the inmates who were witnesses in this matter had served their sentences and had been released. That now he feels safe in Narok prison.
9. When the matter came before the Bwonwong'a J. in Narok on October 16, 2019, the accused prayed that his matter be transferred to Kericho where he has other cases. The court ordered the accused to file an application seeking transfer of the matter within a month.
10. The order by Mwongo J that the case should start de novo has not been reviewed or reversed. No other witnesses testified after the two in respect of which Mwongo J made the order. Accordingly, I am lost why the request for the case to start de novo was made in the first place. The application for directions under section 200 of the [CPC](#) is misconceived and unnecessary. I so find and hold.
11. The case be fast-tracked for it is old.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 30TH DAY OF MAY, 2022

F. GIKONYO M

JUDGE

In the Presence of :

The Accused

Ms. Torosi for Prosecution

Mr. Kasaso- CA

