



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL REVISION CASE NUMBER E156 OF 2021

REPUBLIC.....APPLICANT

VERSUS

ABDI MOHAMMED ALI & 30 OTHERS.....RESPONDENTS

RULING

1. By a letter dated 27th July, 2021, the office of the Director of Public Prosecutions sought that the court calls for Mombasa Chief Magistrate's Court CR. Case No. 1705 of 2016 Republic –vs- Abdi Mohamed Ali and 30 others and examine the record of proceedings therein as to their legality and/or propriety of the finding made by the said court on 22nd July, 2021.
2. It was also sought that the court be pleased to alter and/or reverse the said order made on 22nd July, 2021 directing the prosecution to proceed and/or close its case after indicating that they had witnesses who had not testified and were willing and ready to attend court and give their evidence.
3. The applicants also sought that in the interest of justice there be stay of execution of the lower court ruling made on the 22nd July 2021 pending the final determination of the proceedings herein.
4. The application was supported by the grounds that the trial magistrate directed the prosecution to proceed with the case even after it had been submitted that the said witness was unable to attend court since she was on leave which leave commenced before she was recalled to attend court.
5. That the trial magistrate erred in both law and fact by directing the prosecution to proceed with the case even when there was evidence to show that the said witness had been bonded to attend court on the 22nd a copy of which were produced in court in support that the prosecution were keen to seeing that the matter proceeds save for the fact that the witness was on leave.
6. That the learned trial Magistrate erred in both law and fact in disregarding the application by the prosecution to have witness summons issued in an attempt to ensure that she attends court without fail under section 150 of the Criminal Procedure Code.
7. That the trial Magistrate didn't appreciate the provisions of Article 50 of the Constitution of Kenya 2010 which provide for right to fair trial to all parties before it.
8. That the trial magistrate erred in directing the prosecution case closed on its own motion even after prosecution sought for a mention date to seek directions from the DPP since the same had a hearing date on the coming week on 29th July, 2021 and subsequent week.
9. That the order issued by the lower court on 22nd July 2021 was unjust, prejudicial to the fair trial where all parties should have an opportunity to ventilate their issues before court and therefore lacks the legality basis.
10. The ruling delivered on 22nd July, 2021 was to the effect that prosecution had caused the delay in prosecuting the case to the last four to five years and that failure to prove that summons issued by the court were served on the witnesses who were said not to have been traced made the court to decline granting an adjournment as it had indulged the prosecution time and again but the prosecution did not reciprocate.
11. I have looked at the ruling and I do find that a decision to grant or decline to grant an adjournment is an exercise of discretion based on the circumstances of each case and cannot be a ground for revision but rather an appeal in case it is established that the trial Magistrate did not exercise the discretion judiciously.

12. Having perused the lower court ruling, I find the trial magistrate gave reasons for declining to grant an adjournment, in this 2016 matter where the trial Magistrate has so far taken the evidence of 54 witnesses and is due to proceed on transfer on October 2021.

13. I think that it will be in the interest of justice that Hon. Kyambia concludes the trial herein before proceeding on transfer, in the circumstances the application for revision fails.

14. The trial court file to be returned today to the lower court for mention on 28.9.2021 for directions.

JUDGMENT DATED, SIGNED AND DELIVERED THROUGH MS TEAMS, THIS 23RD DAY OF SEPTEMBER 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Peris – Court assistant

Ms. Keya for the Applicant

No appearance for Respondents

Hon. Lady Justice A. Ong'injo

Judge