



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE 13 OF 2014

REPUBLIC.....APPLICANT

VERSUS

JOHN NDUNGU KIRERI.....RESPONDENT

DIRECTIONS

1. On 28th January 2014, information was presented to Court against the accused over a charge of murder contrary to Section; 203 as read together with section; 204 of the Penal Code. A plea of not guilty was entered by the accused, when the information was read to him. On 10th February 2014, the Prosecution's application to amend the information was allowed. The accused maintained a plea of "not guilty". The matter was set for hearing. On 24th March 2014, the application for bail was disallowed, but, renewed and a further ruling thereon, delivered on 26th November 2014. On 30th July 2015, he was granted bond.

2. In the meantime, for reasons not clear on the record, the hearing did not take off. The matter was stood over to 25th to 27th May, 2015. On 25th, the prosecution was not ready due to lack of Police file. The defence sought for adjournment for 6th. The case was adjourned due to inability by both parties to proceed and stood over to 23rd, to 26th November 2015. On 23rd, there were four (4) witnesses in court, but the Court was informed that, the defence had written a letter requesting for plea bargaining. The matter was taken out of the cause list. The record indicates that, from the 23rd November 2015, to 8th February 2017, a period of over one and a half years, the Director of Public Prosecutions was reviewing the request for plea bargaining. On 8th February 2017, the Court fixed the matter for hearing on 29th to 31st May 2017. On those dates, the Court was not sitting. There were two (2) witnesses in Court. The matter was stood over to 4th and 5th October 2017. There were three (3) witnesses but Prosecution had no Court file. The hearing was fixed for 28th to 29th November 2017.

3. On 27th November 2017, Prosecution sought for time to make decision in the matter. On 22nd January 2018, the Prosecution elected to proceed with the matter. It was fixed for 9th to 11th October 2018, however, the Prosecution were not ready as the toxicology report was not available. The matter was taken out of the cause list. Then, a further review of evidence by the Prosecution followed. No results were indicated of the same. The matter reverted back to fixing of yet other hearing dates on 16th to 18th January 2019. There is no record of the events of that date.

4. On 16th July 2019, the Prosecutions were not ready to proceed, due to lack of police file. Again the Director of Public Prosecutions reverted to the alleged brief and/or evidence review of the matter. The Court on 21st February 2020, gave the Director of Public Prosecutions thirty (30) days to conclude the review. The matter went dormant. On 19th January 2021, the matter was fixed for directions on 22nd October 2021. It was then subsequent:

a) The matter herein which was first presented to Court on 28th January 2014 has never proceeded to hearing on a single day. that is a period of seven (7) years.

b) It has been fixed for hearing on nine (9) different occasions and other than being adjourned twice due to inability of the Court to proceed, and once on a defence application, all the other adjournments are on to the Prosecution application.

c) The conduct of this matter puts both the Director of Public Prosecutions and the Courts in bad public image and disrepute. It is this kind of case, that make the public lose confidence in the criminal Justice system and resort to "Public Justice"

d) The manner in which the Prosecution has conducted this matter is rather unfortunate. It costs the discharge of its function in issue.

e) It is obvious that, the family of victims of crime will never experience "justice" in such cases. The witnesses may as well be so fatigued or even unavailable. How unfortunate.

5. It is against this background that I order the directions given herein be served upon the In-charge Homicide department at Director of Public Prosecutions to give the court an indication in this matter as to whether the Director of Public Prosecutions, is proceeding with this case or not. In that case, the Prosecution is given a last adjournment and shall be mentioned on 19th January 2021 for further orders. Fixing the matter without the knowledge of witnesses will serve no purpose.

It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 16TH DAY OF DECEMBER 2021

GRACE L. NZIOKA

JUDGE(PJD)

16th December 2021

In the presence of:

Ms Ogwen for The State

Mr Kaka for Accused

Accused – Present

Edwin Ombuna – Court Assistant

COURT

In view of the limited time given, this order shall be typed right away. It shall be certified by the Honourable Deputy Registrar and served upon the parties and the Directorate of Criminal Investigations Headquarters before end of day today.

This direction must be taken seriously. The applicants should also move with speed to provide the information required to enable speedy investigations.

Those are the orders of the Court. Until then, there will be no arrest of the applicants.

GRACE L. NZIOKA

JUDGE

16th December 2021