



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CR CASE NO 12 OF 2016

REPUBLIC.....APPLICANT

VERSUS

VINCENT ADURO JIBENDI.....RESPONDENT

DIRECTIONS

1. On 15th February 2016, the Prosecution drew up information against the accused, over the offence of; murder contrary to Section; 203 as read together with section; 204 of the Penal Code, (Cap 63) Laws of Kenya. On the same date, he was presented to Court on the first appearance. After mental assessment, and appointment of the Legal Counsel, the information was read to him. He pleaded “not guilty”

2. On 6th July 2016, ruling on bail application was delivered. After Probation Officer’s report, He was eventually given bond terms of Kshs1,000,000, one surety of like amount, and additional cash bail of Kshs 300,000. The said terms were set on 27th July 2016. The matter was then set down hearing on 6th, 7th and 8th December 2016. On 6th December 2016, the defence Counsel was indisposed. The Prosecution was ready with four (4) witnesses. However, the case was adjourned to; 10th to 12th April 2017. On 10th April 2017, accused was not produced. The case was taken out of the cause list. It was stood over to 26th to 28th February 2018 for hearing.

3. However, on the 24th January 2018, the Court was informed that, Ms Judith Ekin, who was representing the accused had passed on. A new Counsel one; Ndungu was appointed to represent the accused. On 15th February 2018, the matter was set for hearing on 5th to 7th November 2018. On 26th October 2018, it was taken out of the cause list, as the Court was sitting in Lodwar. It was then stood over to 14th to 16th May 2019. On 15th May 2019, Prosecution was not ready as there were no witnesses in Court, it was fixed for hearing on 10th and 11th December 2019. On 10th December 2019, the learned trial Judge was on leave. The matter was stood over to 29th and 30th September 2020. Eventually after the mention on 19th September 2021 to fix dates for hearing, the matter went dormant until 4th May, 2021. It could be due to scale down of Court activities as a result of COVID 19 Pandemic.

4. On 28th July 2021, a warrant of arrest was issued against the accused. However, on 13th September 2021, his lawyer presented him to Court. Being an old matter, hearing dates were given for 26th and 27th October 2021. Unfortunately, the matter could not be reached due to an on-going matter. It was stood over to 7th and 8th December 2021. On 7th December 2021, the Prosecution were not ready. The defence protested against the adjournment.

5. Pursuant to the aforesaid, it is clear that, the adjournment herein has been occasioned by both the defence and the Prosecution. The Court too has contributed to the same. This is a rather sad situation where a matter has not taken off for over five (5) years. The slow pace at which the wheel of justice has moved herein shows how backlog is created and fatigue associated with delay and frustration to witnesses. It is very unfortunate. On that basis I order as follows:

- a) *The Director of Public Prosecution must bond all witnesses at once.*
- b) *The matter was to be given hearing dates on priority basis.*
- c) *To be heard on a day to day basis for three days.*
- d) *Defence must prepare for hearing.*
- e) *There will be no adjournments on circumstances that can be avoided.*

It is so ordered.

Dated, delivered virtually and signed on this 16th day of December 2021.

GRACE L. NZIOKA

JUDGE

16th December 2021

In the presence of:

Ms Ogweno for the State

Mr Ndungu for the accused

Accused present in person

Edwin Ombuna – Court Assistant

COURT

The matter will be heard on 31st January, 3rd February and 7th February 2022, before Hon. Lady Justice Grace L Nzioka.

GRACE L. NZIOKA

JUDGE(PJD)

16th December 2021