

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL CASE NO. 87 OF 2018

GERRISHON OKUDU OTIENO.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

I have considered the submissions from both the appellant and Respondent's sides. I have also perused the orders of the Hon. Lady Justice G. W. Ngenye – Macharia delivered on 5.11.2019. The said orders allow the appellant's application to adduce additional evidence in the form of an alibi in Makadara Criminal case no. 6270/2012, Abdul Rahim Irungu and Gerishon Otieno. Both sides have agreed that this is new evidence and that admitting the same is tantamount to opening up the defence case. I agree with the submissions that this is the only way in which this evidence which the appellant intends to give, shall form part of the lower court proceedings, and possibly this appeal.

In the circumstances, I order as follows:-

- i. That Makadara Criminal case number 6270/2012 be re-opened for further defence case only to the extent of and limited to the applicant/appellant (accused) giving his evidence on alibi.**
- ii. That upon tendering his evidence of alibi, the defence case to be closed.**
- iii. That this matter be heard by the initial trial magistrate. However, if the initial trial magistrate has left the station, the chief magistrate shall allocate this matter to a different magistrate with jurisdiction.**
- iv. The trial magistrate shall proceed to write a fresh judgment in view of the fresh evidence of the defence.**
- v. Matter to be accordingly mentioned before the Chief Magistrate's court for further directions. Mention 29.10.2020.**

HON. JUSTICE D. OGEMBO OGOLA

23RD OCTOBER 2020