

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL REVISION CASE NO. 105 OF 2019

MWIKAMBA MWAMBI.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

The applicant, **MWAMBI MWIKAMBA** has moved the court vide a letter dated 2.4.2019 The applicant has sworn an affidavit in support of his claim, basically that on the material day of hearing of his traffic case No. 21522/2018, on 28.2.2019, the case proceeded in the absence of his advocate. That there are issues that the advocate for the applicant would have wanted to take up with the witness (PW2), thus necessitating an application for recall of the witness (PW2). The said application for recall was also dismissed. These orders gave rise to the present application.

The applicant has not been opposed by the Republic.

I have considered the submissions of learned counsel for the applicant. I have also perused the proceedings and the rulings of the lower court regarding this matter. The one thing that comes out is that it is the advocate who failed to present himself before the trial court for hearing on a date fixed. In the ruling of the court, it was in compliance with the Constitutional requirement as to a speedy trial under Article 50(2)(e) of the constitution that the case proceeded in the manner in which it did.

Under section 362 of the Criminal Procedure Code;

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”

I have particularly considered the element of propriety of the orders of the lower court in light of the constitutional requirement to fair trial (Article 50(2)(e)). Also in light of the fact that no prejudice would be suffered by either sides if the aggrieved orders are revised, and the fact the prosecution do not oppose this application. In the interest of justice, I allow the application of the applicant dated 2.4.2019 and order that Milimani Law Court, Traffic case number 21522/2018, Republic versus Mwarubi Mwikamba, be re-opened so that PW2 may be recalled for further cross-examination. The hearing of the case would then proceed in the normal manner and be concluded without any delay.

HON. JUSTICE D. OGEMBO OGOLA

23RD OCTOBER 2020

Court:

Ruling read out in open court (on-line) in the presence of the applicant, his advocate Ms. Muhochi and Mr. Momanyi for the state.

HON. JUSTICE D. OGEMBO OGOLA

23RD OCTOBER 2020