



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**

**CRIMINAL CASE NO. 50 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**SIMON EVANS KANDIE.....ACCUSED**

**DIRECTIONS**

[1] When the defence closed its case after the unsworn statement made by the accused on 19<sup>th</sup> October 2020, the Court reserved judgment for the 24<sup>th</sup> November 2020 without indicating the period by which Counsel for the Prosecution and for the defence would put in written submissions. When setting out to write judgment in the case, I realised that the said Counsel had not put in any submissions in the matter.

[2] Parties to a criminal trial have a right to make submissions reserved by sections 310 and 311 of the Criminal Procedure Code as follows:

*“310. Prosecutor’s reply*

*If the accused person, or any one of several accused persons, adduces any evidence, **the advocate for the prosecution shall, subject to the provisions of section 161, be entitled to reply.***

*311. Where accused adduces no evidence*

*If the accused person says that he does not intend to give or adduce evidence and the court considers that there is evidence that he committed the offence, **the advocate for the prosecution shall then sum up the case against the accused person, and the court shall then call on the accused person personally or by his advocate to address the court on his own behalf.***

The court had by its finding under section 306 (2) of the Criminal Procedure Code on case to answer already found that there was evidence that the accused committed the offence and hence put the accused on his defence.

[3] In addition, the *Kenya Judiciary Criminal Procedure Benchbook, 2018* posts the practice for final submissions at para. 176 p.106 as follows:

**“XVI. FINAL SUBMISSIONS**

*176. At the close of the case, both the prosecutor and the accused are entitled to present submissions to the court on both the evidence and the law (ss. 213, 310 & 311 CPC). The Prosecution has a right of reply where the defence calls evidence by a witness other than the accused, and where the DPP personally appears as advocate for the Prosecution (s.161 CPC).”*

See also *R. v. Wanasuya s/o Bola* (1944) 11 E.A.C.A. 56 where the Court of Appeal for Eastern Africa considered the equivalent provisions of the Ugandan Criminal Procedure Code and set out the correct order of addresses (submissions) in each case of the different cases that may arise:

*“...when the accused neither gives nor calls evidence but merely makes an unsworn statement the procedure will be the same [the prosecutor will sum up the case for the prosecution and, finally, the advocate for the accused will sum up his case] save that, of course, the accused may not be cross-examined upon his statement (section 217). It is true that the Code does not in terms provide for this eventuality, but if the fact of the accused giving evidence does not deprive him of the right to the last word, it is unreasonable to suppose that his making an unsworn statement (which is regarded as something less) would have that effect.*

*Similarly, the Code fails to provide expressly for the right of the prosecution to sum up when the accused elects to make an unsworn statement. Nevertheless, **the logical inference from section 273(2) is that the prosecution must have this right, for if the prosecutor***

*may sum up the case for the prosecution when the accused elects not to exercise any of his rights, a fortiori he must have that right when the accused elects to avail himself of one of them and to make an unsworn statement. This in accordance with the practice in England, see R. v. Sheriff 20 Cox Cr. C. 334....”*

[4] Accordingly, this court now directs that the judgment in the matter is deferred to allow the counsel for the Prosecution and for the Defence to make such final submissions in the matter as they may consider appropriate in the case. As the Covid-19 situation does not allow oral submissions before the court, (and this court being on transfer out of station), Counsel for the Prosecution will file and serve their submissions first within the 14 days and the Defence will make their submissions within 14 days of service of the Prosecution’s submissions.

[5] Judgment is set for 25<sup>th</sup> January 2021.

*Order accordingly.*

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF NOVEMBER 2020.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Mr. Ngamate, Advocate for the Accused.

Mr. Abwajo, Prosecution Counsel for the Prosecution.