

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL DIVISION

CRIMINAL REVISION NO. 178 OF 2020

ALLAN GRAY.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. By a letter dated 18th May 2020 the Applicant Allan Gray sought that this court calls for Shanzu SPMC Sexual Offence Case No. 3 of 2019 for purposes of satisfying itself as to the correctness of the finding and order recorded determining that there was a case to answer on the part of the Applicant herein.

2. The grounds upon which the revision was required were set out as follows:-

a) A lack of corroborative on Medical evidence linking the defendant with the alleged offence.

b) Inconsistent evidence on the part of the complainant alleging that the defendant last committed the offences charged in the month of August 2018 whilst evidence tendered by the medical doctor in court stated that the offence complainant of occurred in the month of November 2018.

c) Indeterminate evidence adduced by the complainant as regards the dates when the alleged offence occurred rendering the defendant unable to mount a noblest defence to the charges.

3. In Okere Advocates to the Applicant didn't attend on 10/12/2020 to argue the application and the same was set down for ruling based on the letter dated 18th May 2020.

4. With all due respect the placing of the Applicant on defence was based on a finding by the trial Magistrate under Section 211 of the Criminal Procedure Code that the prosecution had raised a prima facie case. Such a finding cannot be faulted by an application for revision. That finding was an exercise by the inherent discretion of the trial Magistrate which can only be challenge on appeal based on good grounds.

5. The grounds raised by the Applicant are such that are fit as grounds of appeal or they can be used in his defence. This court does not find any merit in the application for revision as it has not been shown that the trial Magistrate made an error in finding the applicant had a case to answer.

6. The application is therefore dismissed. The Applicant to attend before the trial Magistrate for Mention on 21/12/2020 for fixing of defence hearing date.

Dated, signed and delivered online by MS TEAMS, this 17th day of December 2020

HON. LADY JUSTICE A. ONG'INJO

JUDGE