

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL REVISION CASE NO.12 OF 2019

(From Original conviction and sentence in Kericho CM Cr. Case No.1787 of 2019 by G. O. Kimang'a - SRM)

REPUBLIC.....APPLICANT

VERSUS

JOSEPHAT KIPKOECH TOO.....RESPONDENT

RULING

1. The State has brought the present request for criminal revision because on 10th June 2019 the trial magistrate discharged the accused person Josephat Kipkoech Too under section 202 of the Criminal Procedure Code (cap 75), for failure of the complainant to attend court.

2. I have perused the trial court proceedings and observe that on 25th May 2019 the investigating officer and the complainant did not attend court, and the court granted the prosecution a final adjournment and ordered the issuance of summons to the investigating officer, and fixed the case for hearing on 10/6/2019.

3. On the 10/6/2019 again the investigating officer did not attend court, nor did the complainant, and the prosecutor informed the court that she did not even have the police file upon which defence counsel Mr. Mbeche complained and asked that the matter be finalised. That is when the magistrate discharged the accused under section 202 of the Criminal Procedure Code (cap.75).

4. Under section 362 and 364 of the Criminal Procedure Code (cap.75), this court has powers to revise orders made by subordinate courts in respect of criminal proceedings, if they are illegal or irregular.

5. In the present case, the trial court must have thought that the State was delaying the matter deliberately when it discharged the accused. The charge appears to be only a minor charge of creating a disturbance in a manner likely to cause a breach of the peace, and the investigating officer and complainant continued to absent themselves. I note that todate, the prosecution has not stated that they have prosecution witness statements, or that they have served the statement on the defence, as required by law. There is a laxity on the part of the prosecution.

6. However, in the interest of administering substantive justice under the provisions of Article 159 of the Constitution, I will give the prosecution a last chance, since the trial court discharged rather than acquitted the accused. If the trial court had acquitted the accused, I would not have exercised this court's revision powers.

7. I thus exercise this court's revision powers and set aside the trial court's orders discharging the accused person, and order that the trial will proceed before a different magistrate. The revision of the trial court's orders herein will only be effective if on the mention date hereunder, the prosecutor will confirm to the magistrate that the prosecution has served all witness statements on the defence, failure to which the discharge orders of the trial court herein will still stand.

8. Mention before the Chief Magistrate Court at Kericho on 7th November 2019.

Dated and delivered at Kericho this 29th October 2019.

George Dulu

JUDGE