



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA, AT NAIROBI

ANTI-CORRUPTION & ECONOMICS CRIMES DIVISION

ACEC REVISION NO. 17 OF 2018

REPUBLIC.....APPLICANT

VS

DAVID MWIRARIA & 6 OTHERS.....RESPONDENT

RULING

1. The Department of Public Prosecution by a way of a letter dated 18th October 2018 requested this court to call for and examine the record in **Nrb CM ACC No 4 of 2015 – Republic Vs David Mwiraria & 6 others** under section 362 and 364 of the Criminal Procedure Code.
2. The issue is in respect of cross examination of PW37 Godfrey Rukaria by the defence.
3. I have indeed called for the lower court record, and examined it. I have equally called for the record in Nrb **JR No 78 of 2015 – Republic vs DPP & EACC- Exparte Applicants Chamanlal Vrajlal Kamani & two others** which was mentioned by the DPP in his letter.
4. Upon perusal of the JR No 78/2015 I have noted that the exparte applicants were seeking to have the DPP's decision of have them being charged quashed and their prosecution before the Magistrate's court terminated. The request was declined by Justice Odunga. The case was not about what documents to be admitted or not admitted as alluded to in the letter by Mr. Mutuku.
5. Upon perusal of the lower court record I have noted the following:
 - (i) The matter was last in Court on 23rd August 2018 when the orders complained of were made. The matter was then fixed for hearing on 23rd-25th October 2018 and 10th -11th & 3rd December 2018.
 - (ii) The DPP only did the letter for review on 18th October 2018, filed it late 19th October 2018 (Friday) afternoon. I was in the office up to 4 p.m on 19th October 2018 and never saw the file, meaning it was filed after 4 pm.
 - (iii) The file was placed before me on 22nd October 2018 8.30 a.m. just before I went to court at 9.00 am, yet the DPP knew all along that the hearing was to continue on 23rd October 2018.
6. I am pointing out all this to show how Mr. Mutuku of the Office of Director of Public Prosecutions has handled this application so casually and yet he comes before the High court under an extreme certificate of urgency.
7. In the lower court Mr. Mutuku raised an objection during the cross examination of PW37 and the trial court heard all the defence counsel in response and did a brief ruling. It is the trial court to decide at the end of the day what is admissible and not admissible. She has indicated how she has interpreted section 146(2) of the Evidence Act.
8. The case is ongoing and with all due respect, this court will not start micro managing the lower court on how to conduct its hearings; what to admit and not admit; what to be cross examined on and what not be cross examined on. If this court does all that at this point then what will it do when the matter comes on appeal in the event that a party is dissatisfied with the judgment?
9. I have in brief not found any errors, illegality or impropriety on the face of the record to make me interfere with the proceedings as provided for under section 362 and 364 of the Criminal Procedure Code. All parties are hereby called upon to prepare themselves and have this matter finalized as soon as possible.

ORDER

The lower court record is hereby returned to the trial court to proceed with the hearing.

Orders accordingly.

.....

HEDWIG I. ONG'UDI

JUDGE

23/10/18