



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CRIMINAL REVISION NO 4 OF 2017

DIRECTOR OF PUBLIC PROSECUTIONSAPPLICANT

VERSUS

UMMULKHEIR SADRI ABDALLA1st RESPONDENT

KHADIJA ABUBAKAR ABDULKADIR2nd RESPONDENT

MARYAM SAID ABOUD3rd RESPONDENT

HALIMA ADAN ALI.....4th RESPONDENT

RULING

Vide a Motion Notice dated 21st March, 2017 the Director of Public Prosecution requested the Deputy Registrar of the High Court of Mombasa to place this case file revision No. 4 of 2017, R Vs UMMULKHEIR SADRI ABDALLA AND 3 OTHERS, before me on 22nd March, 2017 for directions since the 30 days stay the Director of Public Prosecution had been granted to file an appeal were lapsing on the same day. In this Motion Notice, the office of the Director of Public Prosecution also required the Deputy Registrar to attend court for the said mention.

What was a mere mention for directions elicited arguments from parties who even veered into submitting on matters already dealt with in the ruling of 22nd February 2017.

On 22nd February, 2017, this court had delivered a ruling in its revisionary jurisdiction in which it granted several orders to be complied with by the subordinate court and the office of the Director of Public Prosecution the following orders commented themselves from the ruling;

- (a) the Criminal Revision dated 27th January, 2017 be and is hereby dismissed;
- (b) the bond and bail terms proposed by the trial magistrate for the accused (Respondents) be and are hereby confirmed;
- (c) the case to proceed to case conference before the trial magistrate on a date to be fixed by the said trial magistrate within 14 days from today (the 22nd February 2017)
- (d) hearing to proceed on a day to day basis until the case is finalized.

The applicants, being, the office of the Director of Public Prosecution promptly applied for certified

copies of the said ruling, proceedings of the lower court and High court in this revision, and a stay of the order releasing the Respondents on bail or bond.

This court took account of the history of this case and allowed the application on the following conditions;

(a) the office of the Director of Public Prosecution/Applicants to file their notice of appeal within 1 one day from today (22nd February 2017)

(b) to guarantee fair and speedy trial, the office of the Director of Public Prosecution to ensure that the record of Appeal is prepared and filed within 30 days from the date of filing the Notice of Appeal, failing which the respondents will be released on bond as confirmed by this court in order (b) of its ruling.

These orders, made and issued by this Honourable court were directed at the office of the Director of Public Prosecution to comply so that they would benefit from an indirect stay pending the hearing and determination of the appeal.

When the parties appeared before me on 22nd March, 2017 it was because, apart from filing a Notice of Appeal on 2nd March 2017, non of the orders had been complied with and the office of the Director of Public Prosecution citing administrative difficulties they are facing.

M/s Ochola, learned state counsel who was holding brief for Mr Jami, also a learned State Counsel from the office of the Director of Public Prosecution then requested this court to grant them a fourteen (14) days extension to enable them get hold of the record and proceed to the Court of Appeal. This was pursuant to a letter from the office of Deputy Registrar of this court dated 20th March,2017 to the office of the Director of Public Prosecution, informing them that the proceedings in Criminal Revision No. 4 of 2017 Republic Vs UMMULKHEIR SADRI ABDALLA AND 3 OTHERS, were being typed and would be ready as requested by Wednesday , 22nd March 2017. He promised that they would be ready within seven (7) days. This means that the proceedings would be ready by the close of business on 27th March, 2017. There is however no information from the Executive officer of the subordinate court on when proceedings of that court which were also requested for, for purposes of the said Appeal would be ready or whether they were ready.

It is on the strength of this letter that the office of the Director of Public Prosecution requested through a letter dated 21st March 2017,the Deputy Registrar of this court to place this file before this court on 22nd March, 2017, the day the period that had been allowed for them to file the record of appeal lapsed.

As earlier stated, in their arguments and submissions, the parties veered into matters already dealt with in the ruling of 22nd February,2017 being appealed against. It is not the duty of this court to delve into that as it is “functus officio” to comment on its said ruling.

The single question to be addressed and which this court is seized with jurisdiction now, is whether its orders have been complied with or not, and if they have not, whether the office of the Director of Public Prosecution is properly before this court on a mention for directions. I wish to point out that the integrity of the court would be eroded if parties who fail, to be vigilant, or take an extra step and just sit back for time to run until almost the last minute, then run to court to seek a way out of either a real problem or one arising out of human nature of negligence and forgetfulness. The court is then put at cross roads, I say so because, under the Constitution of Kenya, 2010, the rights of parties, especially the accused person, are protected jealously.

Article 10 of the Constitution deals with natural values and principles of governance. It provides as follows;-

10(1) “The National values and principles of governance in this Article binds all state organs, state

officers, public offices and all officers whether any of them;-

- (a) applies or interprets this Constitution ;
- (b) enacts ,applies or interprets any law; or
- (c) makes or implements public policy decisions;

Article 10 (2) elaborates on what is contained in Natural values and principles of governance;-

- (a) patriotism, national unity, sharing and devolution of power, the rule of law; democracy and participation of the people;
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;
- (c) good governance, integrity transparency and accountability, and
- (d) sustainable development.

These values are not mere versions of poetry, to be enchanted, enjoyed only in rhythm, but they ought to be applied to the letter as and when a situation arises.

In line with this, the Constitution jealously protects the right of citizens under the Bill of Rights. And one of the rights, and what is not limited under Article 25 (c) of the Constitution is;

“the right to fair trial”

The manner in which an accused person is guaranteed this right to fair trial is found under article 50 (2) of the Constitution, and in this case Article 50 (2) (e) provides for an accused person;

“to have the trial begin and conclude without unreasonable delay”

I had ordered for the accused persons to be accorded a speedy trial in exchange for bond or bail. If the trial had commenced as directed, the accused persons in this case would remain in custody and probably would not be complaining for they would be sure their fate would be known in one way or another.

However, in this case, it will be noted that the prosecution has opted to forget their release on bond to the last stage. I wish to pose and ask, “is this approach to litigation in conformity with the provisions of Articles 10,25 and 50 (2) (e) of the Constitution ?” Of course, not! Another aspect which comments itself to this court is whether the office of the Deputy Registrar of this court and the Executive officers should become witnesses in this court?

I wish to confirm that they should not and ought not be at the hands of the Director of Public Prosecution as insinuated by the Motion Notice dated 21st March, 2017 addressed to the Deputy Registrar of this court requiring that he attends court. The same has no basis both in law and good governance practice as enshrined in the Constitution and the powers donated to the Director of Public Prosecutions under Article 157 of the Constitution 2010, and the office of Public Prosecution Act.

Lastly, I believe as a matter of practice, having filed a Notice of Appeal in the Court of Appeal, the Director of Public Prosecution ought to address the issue of delayed typing and supply of proceedings in that forum so as to get directions or orders that could sustain their appeal in the same way the High Court deals with proceedings from the lower court.

The reasons I have given and the law cited, inform this court to find that its orders made on 22nd February 2017 have not been complied with and so they remain the same.

It is so ordered.

Ruling read, signed and delivered this 23rd day of March, 2017.

D. O. CHEPKWONY

JUDGE

In the presence of

M/s Ocholla for the state/Applicant

Mr Mwadzogo for Respondents

Respondents –Present

C/clerk - Kiarie