



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
REVISION NO. 7 OF 2017

REPUBLIC PROSECUTOR

VERSUS

MILKA JEROBON CHUMBA..... ACCUSED

RULING

1. By way of a letter dated 8th February 2017, the Director of Public Prosecutions through learned prosecuting counsel *Ms Faith S. Luseno* applied for revision of the multiple decisions made by the trial court on 17th October 2016 in Kapsabet criminal case No. 1942 of 2015.

2. It is the applicants case that the learned trial magistrate erred in upholding an objection by learned counsel for the accused *Mr. Kitur* to the production of a Kenya National Certificate of Secondary Education which was allegedly forged as an exhibit through the investigating officer (PW7) and a computer generated list of candidates who sat for the examination at Tulwo High School in 1985 by an employee of the *Kenya National Examination Council* (PW6). The applicant contends that the decision of the trial court subjected the state to a mistrial.

3. I have considered the application. I have also carefully examined the record of the lower court which has been forwarded to this court.

4. The jurisdiction of the High court on revision is not unlimited. *Section 362* and *section 364* of the *Civil Procedure Code* when read together leave no doubt that the court can only exercise its revisionary jurisdiction if it is satisfied that there was an illegality, incorrectness, irregularity, mistake or impropriety in the decision, sentence or order sought to be reviewed.

5. The proceedings of 17th October 2016 before the trial court shows that the trial court did not stop PW7 from producing the certificate alleged to be forged and a computer generated list of candidates who sat for examination in the year 1985 at *Tulwo High school* as exhibits in support of the Prosecution case as alleged by the applicant. The court record reveals that after *Mr. Kitur* objected to the production of the documents, the learned prosecuting counsel did not press the matter further but instead opted to recall PW6 to produce the documents. The trial court allowed the application for recalling of PW6 for that purpose despite opposition by the defence.

6. The record further shows that when PW6 took to the stand after being recalled, the prosecution did not ask her to produce the Kenya National Examination certificate in question.

The prosecution wanted her to produce a computer generated list of the aforesaid candidates which move was objected to by *Mr. Kitur* on grounds that no basis had been laid for the production of the document as

required by the *Evidence Act*.

The learned trial magistrate upheld that objection.

7. The circumstances under which a computer generated statement or print out can be produced in evidence are clearly enumerated in *Section 65* of the *Evidence Act*.

Section 65 provides that such a statement or print out qualifies to be a document and is admissible in evidence if the conditions stipulated in *Section 65(4)* are satisfied which are that;

(a) The computer print-out containing the statement must have been produced by the computer during the period in which the computer was regularly used to store or process information for the purposes of any activities regularly carried on over that period by a person having lawful control over the use of the computer.

(b) The computer was, during the period to which the proceedings relate, used in the ordinary course of business regularly and was supplied with information of the kind contained in the document or of the kind from which the information so contained is derived.

(c) The computer was operating properly or, if not, that any respect in which it was not operating properly was not such as to affect the production of the document or the accuracy of its content.

(d) The information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of business.

8. *Section 65 (8)* further requires that for such a document to be admissible in evidence, it must be accompanied by a certificate identifying the document and giving particulars of the device (computer) used in generating it which must be issued by a person holding a responsible position in relation to the operation of the device used to generate the document.

9. The proceedings of the lower court clearly shows that the prosecution did not attempt to fulfil any of the conditions precedent to the production of a computer generated print out as required by *Section 65(4)* and *Section 65(8)* of the *Evidence Act*.

There is therefore no doubt that the learned trial magistrate was correct in refusing to allow the production of the said document through PW6 since the same was obviously not admissible in evidence. His decision was made in accordance with the law.

10. I am thus not persuaded that the impugned decision was illegal or irregular or that it was based on any mistake. In the premises, I do not find any merit in the instant application. It is accordingly dismissed.

C.W GITHUA

JUDGE

DATED, and SIGNED at ELDORET this 13th day April, 2017