

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

REVISION NO. 6 OF 2017

REPUBLIC PROSECUTOR

V E R S U S

NOAH KIPKOECH KOSGEI ACCUSED

RULING

1. I have given due consideration to the application for revision made by the office of the Director of Public Prosecutions in letter dated 8th February 2017. In the application, learned prosecuting counsel *Ms Faith S. Luseno* invites this court to review the decision of the trial court in Kapsabet Resident Magistrate's Court Criminal case No. 231 of 2015 in which the prosecution's application for adjournment was rejected. The rejected application was to enable the prosecution to avail a clinical officer to testify in support of its case.

2. The application is based on grounds that the impugned decision had the effect of denying the prosecution a chance to prove its case beyond reasonable doubt; that the trial court failed to take into account the circumstances surrounding the unavailability of the expert witness; and, that the court did not consider both the interests of the victim of the offence and the accused person in ordering the prosecution to close its case on 1st February 2017.

It is the applicant's prayer that the prosecution case be re-opened to enable the testimony of the clinical officer to go on record.

3. The revisionary jurisdiction of this court is donated by *Section 362*, as read with *Section 364* of the *Criminal Procedure Code*. The two provisions empowers the High Court to call for and examine the record of criminal proceedings before any subordinate court to satisfy itself about its correctness, legality or propriety of any finding, order or sentence passed by the lower court.

4. I have examined the record and proceedings of the lower court which were recently forwarded to this court. The record shows that one *Noah Kipkoech Kosgei* was charged with the offence of assault causing actual bodily harm contrary to *Section 251* of the *Penal Code*. He denied the charges. He was granted a cash bail of Ksh 10,000.

5. The trial commenced on 14th February 2016 and continued on 27th January 2017 when the prosecution was granted a second adjournment to 1st of February 2017. On that date, the prosecution called one witness after which it sought another adjournment to call the clinical officer. The application was rejected after which the trial court fixed the case for ruling. This is what triggered the instant application for revision.

6. As stated earlier, the court's revisionary jurisdiction is limited to revising orders made by the trial court which are in its view illegal or irregular for reasons that would be apparent on the lower court's record.

7. After going through the lower courts record in this case, I have not come across any indication that the order of 1st February 2017 was either illegal or irregular. The learned trial magistrate had discretion to either allow or decline to grant an application for adjournment made by either of the parties in the proceedings before him. There is nothing to suggest that the trial court wrongly exercised its discretion considering that the prosecution had been granted five previous adjournments including a last

adjournment on 24th August 2016 when hearing was adjourned to 27th January 2017.

8. The record also shows that the accused person was put on his defence on 22nd February 2017. Given the proceedings before the trial court, I do not find any basis upon which I can order the re-opening of the prosecution's case as prayed.

I consequently find that the application dated 8th February, 2017 is devoid of merit and it is hereby dismissed.

9. The Deputy Registrar is hereby directed to ensure that the original record of the trial court is returned to the court in good time for the defence hearing.

It is so ordered.

C. W. GITHUA

JUDGE

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