



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

MISC. CRIMINAL APPLN. NO. 5 OF 2017

FREDRICK ODAGA OLANDO.....APPLICANT

- versus -

REPUBLIC.....RESPONDENT

RULING

1. The Applicant herein, **FREDRICK ODAGA OLANDO**, was charged before the Migori Law Courts on 21/01/2016 in **Criminal Case No. 52 of 2016** (hereinafter referred to as (**'the case'**)) with stealing and conspiracy to commit a felony. He denied both counts.
2. Learned Counsel, Mr. Marvin Odero, was instructed by the Applicant to represent him in the case. I have perused the record of the case and noted that the case was fixed for hearing severally but did not take off for two reasons; the unavailability of the Counsel and that the prosecution was yet to avail the defence with witness statements and a copy of the charge sheet.
3. The prosecution then informed the trial court that it had prepared the documents but the Counsel was nowhere to be availed with. That trend persisted for a while and on 01/03/2016 the trial court found laxity on the part of the defence and made a last adjournment of the case noting that several witnesses were present every time the matter came up for hearing.
4. The case then took a different turn when the Applicant jumped bail and was only re-arrested after rigorous efforts of the surety and the police. The surety then successfully applied to be discharged and the Applicant has been in remand since then. That was on 02/11/2016.
5. When the matter came up for hearing on 21/12/2016, there were no witnesses in court and the Applicant complained that the case was taking too long to be finalized as he is ready for the hearing. Luckily, some witnesses turned up that day and the matter proceeded for hearing. The Applicant was then unrepresented and did not raise the issue of witness statements and the charge sheet.
6. The hearing proceeded on other days and a total of 8 witnesses testified. The prosecution then closed its case and the Applicant was placed on his defence and all the available avenues for presenting the defence were explained to him. He opted to give unsworn testimony without calling any witness. He sought for time to prepare for his defence and he was allowed. That was on 01/03/2017 and the defence hearing was set for 07/04/2017.
7. When the matter came up for the defence hearing, the Applicant indicated to the court that he had not been given witness statements. The court made an order that the statements be availed to the Applicant

before he presents his defence.

8. The Applicant then filed the instant application seeking the following orders: -

“a. I am denied access to witness statements and or the copy of the prosecution file, after having applied persistently for the same, during and in the pendency of the forcefully on going proceedings.

b. That I be present during the hearing of this application, Sir.”

9. He deponed that the trial was conducted against his wish and submitted that the way the hearing was conducted contravened his rights under **Article 47(1) and (2)** and **Article 50 (1) and (2) (a-k)** of the **Constitution**. The Respondent through the Learned Senior Principal State Counsel urged this Court to be accordingly guided by the record.

10. I have revisited the background of this application to be able to deal with the factual allegations raised by the Applicant with clarity and precision. The trial court found for a fact that the defence Counsel was not taking the case seriously. It is on record that at one point the trial court found the then Applicant's Counsel not serious in conducting the trial. It is also on record that the prosecution had indicated that the documents were ready for collection by the then Counsel at any time but for the Counsel's unavailability. That was followed by the Applicant jumping bail.

11. When the Applicant had spent some time in remand as a result of the withdrawal of the surety, it was the Applicant himself who complained that the case was taking too long and that he was ready with the hearing. The Applicant did not revisit the issue of witness statements and the charge sheet at all. Given that the prosecution had stated that the documents were available for collection at any time and the fact that the Applicant never raised the issue after he decided to conduct the trial by himself, the trial court had no reason to believe that the Applicant was yet to be availed with the documents. Reasonably, one would think that the Applicant collected the documents as the Applicant actively participated in the hearing of the case. He understood the charges he faced and cross-examined all the prosecution witnesses accordingly.

12. It was until when the Applicant was placed on his defence when he revisited the issue of the witness statements and the charge sheet. The court promptly made an order that the same be availed to the Applicant. There is no reason as to why the court would not have made a like order had the Applicant raised the issue much earlier.

13. From the foregone, I find that the Applicant was given ample and reasonable access to the witness statements and the charge sheet through his Counsel and himself and the contention that his rights were contravened cannot stand. I do not see how his rights under **Article 47(1) and (2)** and **Article 50 (1) and (2) (a-k)** of the **Constitution** were infringed.

14. As ordered by the trial court, the Applicant shall be provided with witness statements and the charge sheet. He shall also be provided with copies of the proceedings. Since the case was initiated in January 2016 and ought to have been concluded within a period of 12 months, the trial court shall take measures to ensure a speedy determination.

15. A copy of this ruling together with the case file shall be placed before the trial court **today** for appropriate directions.

16. Those are the orders of this Court.

DATED, SIGNED and DELIVERED at MIGORI this 28th day of June 2017.

A. C. MRIMA

JUDGE