

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL REVISION NO.22 OF 2017

D.P.P.....APPLICANT

- V E R S U S -

RUTH WAMBUI WANGUI.....RESPONDENT

REVISION ORDER

This case has been placed before me for purposes of exercising this court’s supervisory powers under Article 165 of the Constitution and revisionary powers under Section 362 and 364 of the CPC. ***Criminal Case No.1129 of 2016 Republic v Ruth Wangui Wambui*** was proceeding before the **Hon. S.N. Mwangi** SRM, whereby she was taking the evidence of **PW5** one **PC Julius Kiptanui**. During **PW5**’s testimony, the court observed that the witness had been warned several times to stop reading whatever was written in his hands but had not stopped and that when he was asked to refresh his mind from his statement, he declined. The court therefore ordered that the examination in chief be stopped and **PW5** be subjected to cross examination by the accused.

The State Counsel took issue with the said court’s order and moved this court for revision orders urging that the Hon. Magistrate had no power to cut short a prosecution witness during examination in chief and order cross-examination and that what the court did was against the spirit of Article 157(10) of the Constitution.

I have perused the court record. The court did not record whether indeed it confirmed that the witness had written on his hands. In any event, even if the witness had scribbled on his hands, the court did not have the discretion to stop the witness from testifying midway and call for cross examination. Evidence given halfway would not be useful to the case because the court cannot take it into account in its ruling or judgment. The court should have allowed the witness to conclude his testimony and address the witness’ conduct or demeanor in the court’s ruling or judgment.

The only time a witness is cut short in his testimony is when the prosecution applies to cross examine a witness who is deemed to be hostile. It is the prosecution which decides what witnesses to call and if one’s demeanor is questionable, that is the prosecution’s problem and the court deals with the issue in its Ruling/Judgment. If the court intercepts a witness and cuts him short, it may be construed as interference with the prosecutorial powers of the Director of Public Prosecution under Article 157(10) of the Constitution and may therefore be prejudicial to the prosecution case.

From the foregoing, I find that the court fell into error in cutting short the testimony of **PW5**. For that reason, I hereby quash the order of the court made on 19/6/2017 and set it aside. Because of perceptions, I direct that the case do proceed before another magistrate of competent jurisdiction. The said court will give directions on how to proceed.

It is so ordered.

Signed and Dated at NYAHURURU this 21st day of June 2017.

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R.P.V. Wendoh

JUDGE