

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CRIMINAL REVISION NO. 14 OF 2017

(From original Criminal Case No. (S.O.) 69 of 2016 of the Chief Magistrate's Court at Naivasha)

(Formerly Criminal Case No. 429 of 2016 of the Senior Resident Magistrate's Court at Engineer)

BENSON NDIRANGU MUTHONI.....APPLICANT

-VERSUS-

REPUBLIC.....PROSECUTOR

RULING ON REVISION

1. The Accused herein was charged before the SRM's Court Engineer **Criminal Case 429 of 2016** with the offence of Rape under the Sexual Offences Act. Pursuant to his previous application to this court in **Criminal Revision Number 35 of 2016**, this court ordered that the matter be transferred to the CM's Court Naivasha. A new number Chief Magistrate's Court Naivasha **Criminal Case Number (S.O.) 69 of 2016** was assigned to the case. That was in November 2016. The Applicant elected to have the case start *denovo*.
2. The Accused has yet again filed a revision seeking to have his case transferred, this time to Court Number 2 or any other court in the Chief Magistrate's Court Naivasha. The chief ground is that since the transfer of his case to the Chief Magistrate's Court Naivasha in November 2016, no hearing has taken place.
3. I have called for and perused the proceedings in Naivasha Chief Magistrate's Court **Criminal Case Number (S.O.) 69 of 2016**. I have confirmed indeed that on several occasions the matter has failed to proceed to hearing as the complainant has not attended. Indeed the prosecution has severally indicated that their counterparts in Engineer have not released the police file into their custody.
4. In my considered view, the delay of a case, without more, cannot be a proper basis for transferring a case from one court to another. However, I fail to understand the lackadaisical attitude of the prosecution in moving this matter forward. Even so I reject the Accused's request for transfer of the case.
5. I would remit the matter back to the trial court. Justice delayed is justice denied, for both the victim and the Accused, especially in a matter of this nature. No doubt, the trial court will require prosecution to demonstrate more seriousness in this matter than displayed hitherto. For starters, the charge sheet ought to be amended so that the offence reflected in the statement of offence in the main count indicates that the offence is Rape contrary to Section 3 (1) (a) and (c) as read with Section 3 (3) of the Sexual Offence Act.

Written and signed at Naivasha this 27th day of **July, 2017**.

C. MEOLI

JUDGE