

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL REVISION NO.18 OF 2017

ANTHONY MARIACH KUNUITA.....APPLICANT

- V E R S U S -

REPUBLIC.....RESPONDENT

REVISION ORDER

This case has been referred to me by the learned State Counsel Ms. Chelangat for purposes of revision.

The background of this application for revision is that this case came up for hearing on 20/4/2017 when the court was informed that the investigating officer was present but had never recorded his statement because he had been away on an operation and needed time to go record his statement so that it could be served on accused before the hearing could proceed.

The court declined to grant the investigating officer that opportunity and observed that the case had not proceeded to hearing since 7/6/2016 when accused took plea, and that the matter had come up severally and yet no request had been made for the investigating officer to go and record his statement and therefore the court declined to allow the investigating officer time to go and record his statement or testify.

There is obviously some laxity on the part of the prosecution for not having had the investigating officer's statement recorded 9 months after the accused had been arrested. This is because the accused should have been supplied with all witness statements upon being charged. But on the other hand, the investigating officer in most cases, is a formal witness and will testify on what he was informed or for what he found at the scene or what he deduced from interrogating witnesses.

I also observe that not only witnesses who will have recorded statements can be called to testify. Other witnesses who may not have been known or who could not be found can record statements after the commencement of the case and the same would be given to the accused before the said witness testifies.

In this case, only 2 witnesses had so far testified. The court should have considered what prejudice would be suffered by the parties to this case (the accused and the complainant), if the investigating officer was locked out of the witness box. If the investigating officer had been allowed, the investigating officer would have recorded his statement and proceeded to be heard the next day or would have been heard later after the other remaining witnesses testified and avoided the delay that has been occasioned following this application and justice will have been seen to have been done.

Article 159 2(d) of the Constitution empowers the courts to administer justice without undue regard to technicalities. In the interests of justice, it is proper that the trial court's order of 20/4/2017 to lock out the investigating officer from testifying be revised and set aside so that the evidence of the investigating officer can be taken.

In light of what has transpired before the trial court, it is proper that this matter be transferred to another magistrate with jurisdiction to try and finalize it.

Mention before the Chief Magistrate on 29/11/2017.

Signed and Dated at *NYAHURURU* this *23rd* day of *November*, 2017.

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R.P.V. Wendoh

JUDGE