



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
HC.CR CASE NO. 5 OF 2015

REPUBLIC.....STATE

VERSUS

GEORGE OTIENO OKOTH.....ACCUSED

R U L I N G

On 22nd February, 2016, the prosecution made an application to recall P.W.7, Chief Inspector Bamfort Tsurwa, before the closing of the prosecution case, to identify the accused's clothing and the human hair he alluded to in his evidence in chief.

Mr. Ondari for the defence opposed the prosecution's application. He submitted that the P.W.7 was called to identify what the witness recovered on the body of the accused.

For some reason known to the prosecution, the witness did not identify all the items he referred to in his evidence.

On cross-examination, the defence, noticing the lacuna, exposed the same. If the prosecution were to be allowed to recall to seal these lacunae, the case would continue ad infinitum. What rights does the court accord the accused person?

The prosecution however sees nothing prejudicial to the accused.

In any event the witness had not been stepped down. The constitution further prohibits unnecessary reliance on technicalities. **Article 159 (i) (d)** alludes to:

‘Justice shall be administered without undue regard to procedural technicalities,’

Having regard to the submissions by the defence and also listening to the submissions by the prosecution, this court will allow the prosecution to recall P.W.7 to come and identify the other items, he did not identify. In any event his duty will, in my view, be brief one.

Therefore the prosecution's application be and is hereby allowed.

It is so ordered.

Dated at Nyamira this 14th day of March 2016.

C. B. NAGILLAH

JUDGE

In the Presence of:-

Nyamwange hold brief for the applicant

Malesi for the respondent

Mercy -Court Clerk