

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA

JUDICIAL REVIEW NUMBER 1 OF 2016

DIRECTOR OF PUBLIC PROSECUTION :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

REPUBLIC ::::::::::::::::::::::::::::::::::: RESPONDENT

RULING

Following an application for revision filed on 17.3.2016 by the state prosecutor Mr. Mark Nabuyumbu, in Criminal Case number 540 of 2014 of **Republic versus Veronica Chemeses**, I did on 20.6.2016 make an order that the lower court file be availed to me. That has now been done and the proceedings of 13.6.2016 as recorded by **Principal Magistrate Hon. D. M. Machage**, does not at all reflect the claim and or allegations raised by the state prosecutor in the application for revision.

In the said application Mr. Mark Nabuyumbu claims that he was the one to prosecute the case in **PM Criminal case 540 of 2014**. On 13.6.2016 he had other matters in the High Court and requested Mr. Muriuki, also a state prosecutor, to request the matter be placed aside to enable him deal with it after he was through with the High Court matters. After Mr. Muriuki made the said request, the trial magistrate disallowed it and as he was reading the ruling Mr. Mark Nabuyumbu arrived. The ruling was read disallowing an application to keep the file aside. Mr. Simon Muriuki informed the court that the prosecution was then ready to proceed. Hon. Machage however denied Mr. Mark Nabuyumbu audience and urged Mr. Simon Muriuki to proceed.

Mr. Simon Muriuki was not prepared for the case and consequently closed prematurely the prosecution case. That day Mr. Mark Nabuyumbu had two witnesses ready to testify and some exhibits to produce before the closure of their case. That was shut out. Submissions were made on no case to answer and file carried away for ruling.

The Lower court proceeding for that day shows Mr. Muriuki was appearing in the matter for the state. The accused was represented by Mr. Nyakundi advocate. When the matter was called the state prosecutor stated:

“I have two witnesses present ready to proceed.”

Later at 11.30am the state prosecutor stated;

“I am not in a position to proceed. I don’t have the police file. I pray for another date.”

The said applications for adjournment was opposed by Mr. Nyakundi on the grounds that earlier on the state had indicated were ready to proceed and kept him waiting till 11.30am and that on 13.5.2016 they had been granted a last adjournment.

The court agreed with the defence, disallowed application for adjournment and urged the prosecution to proceed. Mr. Muriuki then stated that he was not in a position to proceed and closed the prosecution case at that point. Mr. Nyakundi submitted on no case to answer, and Mr. Muriuki relied on evidence adduced so far.

Looking at the foregoing it is vivid that the allegations by Mr. Mark Nabuyumbu in the application are not supported at all by the court records of the proceedings of 13.6.2016. Unfortunately for Mr. Mark

Nabuyumbu, the position is that whenever there are discrepancies in allegations by a party to a suit and the court record, the court considering the issues raised, should go as per the court record as a reflection of the truth on what transpired. I do concede that the court record may not always reflect the truth of what transpired as it may be manipulated by the judicial officer during the recording to suit his or her circumstances, but unfortunately that is the law.

The court record shows that the procedure followed by the magistrate was correct. The prosecutions were not ready to proceed and their application for adjournment in the circumstances was rightly denied. There are no good grounds established to warrant this court intervene by way of revision. The application by the state prosecution is accordingly rejected. The file should be returned to the trial magistrate to proceed from the point reached.

This court so finds.

S. GITHINJI

JUDGE

22.6.2016