

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

MURDER 62 OF 2013

REPUBLICPROSECUTOR

VERSUS

CLIFF PETER VOREMIACCUSED

RULING

This is a Ruling in respect of an application by Mr Mushelle, advocate for the accused person to have the matter start de novo since only two witnesses have testified.

The same has been objected to by M/s Ocholla, counsel for the state who has noted that there has been delay in having the matter heard expeditiously due to advocate's absence. She argues that starting the matter de -novo would frustrate the witnesses and delay the matter further. She also submits that there was counsel present when the two witnesses on record testified, hence the trial can be said to have been properly conducted. She further stated that the advocate for the accused person has therefore not given sufficient reason for the matter to start de -nove.

In reply to this, Mr Mushelle stated that neither the prosecution nor the defence would be prejudiced if the matter started de -novo. He went on to explain that the delay in having the matter heard expeditiously was caused by the confusion which was exhibited by the accused person whereby he had been receiving treatment. He also indicated that the first time the accused appeared not to follow proceedings and so the same were stopped to enable him receive treatment.

Having listened to both counsel, I have read through the records of the case.

According to the records, this case was adjourned severally because of :

- (a) waiting of a psychiatrist report.
- (b) lack of exhibits
- (c) waiting for a pre-bail report.

I have also established that when the two witnesses testified on 2.10.2014 Mr Mushelle for the accused was on record then and he made no indication to court that the accused was not able to follow the proceedings. In fact Mr Mushelle cross examined the two witnesses extensively.

I therefore agree with Ms Ocholla for the state that the trial, whereby two witnesses testified, was properly conducted and Mr Mushelle has therefore not given sufficient reason why the case should start de-novo and the two witnesses recalled.

While an accused person under section 200 (3) of the CPC has a right to have witnesses recalled or summoned to testify where they would have already testified, court is expected to be reasonable and judicious in considering this right. This means the accused person is expected to give sufficient reason for such application.

In the instant case, I find that the defence has not given sufficient reason why the case should start de -novo and at the end of the day this would end up offending the provision of Articles 50(2) (e)and Article

159 (2)(b) of the Constitution , 2010, which provisions provides for expeditious /speedy trial. I therefore find the application to have his case start de -novo lacking merit as it will only cause further delay in the matter being finalized. I proceed to dismiss the same.

Dated and delivered this 26TH day of July, 2016.

D. CHEPKWONY

JUDGE