



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 22 OF 2011

REPUBLIC.....APPLICANT

VERSUS

FAITH NYABOKE NYAMBANE.....ACCUSED

20/1/2015

Before J. Wakiaga, J.

Bibu – cc

Mr. Ondari for the accused

Mr. Majale for the state

Accused person present

COURT RULING

The accused took her plea on 7/3/2011 and the hearing was fixed on 27/9/2011 when the matter was listed before justice Makhandia as he then was who ordered that the matter was a court two matter and therefore took the same out.

On 12/10/2011 the same was fixed for hearing before Justice Sitati and a Mr. Mutai appeared for the State. From the court records he indicated to the court that he had seven (7) witnesses after the court had indicated that the matter could not be reached.

On 13/3/2012 the matter was fixed for hearing before Justice Korir when again Mr. Mutai indicated to court that he had six witnesses in court and ready to proceed. The matter was subsequently taken out since the advocate for the accused then on record was absent.

On 6/6/2012 when Mr. Imbali indicated that he had six witnesses and in the absence of the advocate for the accused the same was taken out. On 20/7/2012 the matter was once again taken out since the advocate for the accused was not present.

On 20/3/2013 the accused appeared before justice Muriithi on an application for bond.

Today 20/1/2015 Mr. Majale has appeared before this court and sought an adjournment on the basis that the exhibits were taken to the government chemist and have not been returned. He submits that all his four (4) witnesses present will be referring to the exhibits and in their absence he is unable to proceed.

The application has been opposed by Mr. Ondari for the accused person who has submitted that the court has not been told when the said exhibits were forwarded to the government chemist.

In reply Mr. Majale has conceded that he has no indication as to when the said exhibits were taken to the government chemist.

The question that this court has not answered is why didn't the counsel who appeared before the court on the dates stated herein inform court that the exhibits had been taken to the government chemist? They have all along been ready to proceed with the witnesses only today when Mr. Majale has indicated that the exhibits are missing.

Whereas justice is supposed to look at both sides I have reluctantly granted the state the last adjournment on the following conditions:-

- a) The accused person to be released on bond of Kshs.500,000/= with two (2) sureties of similar amount.*
- b) The State to be ready to proceed with their case to conclusion on 19/3/2015 when the matter shall be heard exclusively on the said dates.*
- c) Four civilian witnesses available to be paid their witnesses expenses.*
- d) The accused to attend mention before the D/R on 20/2/2015.*

J. WAKIAGA

JUDGE

21/1/2015