

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 23 OF 2015

REPUBLIC..... PROSECUTOR

VERSUS

REINOS KIPTOO CHIRCHIRACCUSED

RULING

1. The prosecution has sought leave to adduce further evidence by calling of Dr. Matu to rebut the medical evidence adduced by Dw1, Dr. Muli Simon Kioko.
2. The application is opposed on grounds that the application is ambiguous and prejudicial to the defence. It is further stated that the defence is yet to be supplied with the medical report in question.
3. Section 309 of the Criminal Procedure Code provides as follows;

“If the accused person adduces evidence in his defence introducing new matter which the advocate for the prosecution could not by the exercise of reasonable diligence have foreseen, the court may allow the advocate for the prosecution to adduce evidence in reply to rebut it.”

4. There is no contention that the entire evidence adduced by Dw1, Dr Muli Simon Kioko was foreseeable. The defence will not suffer any prejudice as they will have an opportunity to cross examine the doctor. The defence will also be provided with the said doctors report well in advance for their preparation. Consequently, the objection is dismissed.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 7th day of December 2015.

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B. THURANIRA JADEN

JUDGE