



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL REVISION NO. 59 OF 2013

REPUBLIC APPLICANT

VERSUS

PETER MUKOMA CHEGERESPONDENT

RULING

PETER MUKOMA CHEGE was charged in Chief Magistrate's Criminal Case Number 1344 of 2012 with the offence of obtaining money by false pretences contrary to Section 313 of the Penal Code. He pleaded not guilty on the 24th day of April, 2012 and the case later proceeded to hearing. On 29th day of January, 2013 the prosecution made an application to withdraw the case under Section 87(a) of the Criminal Procedure Code for reasons of consolidating the case at hand with another one Chief Magistrate's Criminal Case Number 2793 of 2012 which was fixed for hearing on 7th February, 2013 and which consolidation was to be done after investigations were completed.

The application was opposed by Counsel for the Accused Mr. Gakuhi on the grounds that according to the letter giving instructions for the withdrawal of the case it was noted that the matter was civil in nature and hence parties should seek civil remedies.

In her ruling the learned trial magistrate declined to allow the withdrawal of the case under Section 87(a) of the Criminal Procedure Code principally on the grounds that three Witnesses had already testified in the case she was handling whereas Criminal case Number 2793 of 2012 had not even commenced. She read mischief and malafides in the prosecutions application.

I have duly perused the letter dated 27th November, 2012 and which contained the advise to the DCIO Urban to proceed to withdraw the case under Section 87(a) of the Criminal Procedure Code.

In the said letter it is noted that no traces of forgery, false pretences were noted and parties were advised to seek civil remedies but it also gave the way forward being withdrawal for consolidation purposes after amendment of the charges sheet.

I find no malice, mischief or bias in the advice contained in the letter, the spirit of which the prosecution was acting upon when making the application for withdrawal of the case under Section 87(a) of the Criminal Procedure Code.

A withdrawal of a case for purposes of consolidation with another one is a good ground unless it can be shown that it is tainted with malice and is malafides.

The order of the learned trial magistrate rejecting the application to withdrawal the case against the Accused under Section 87(a) of the Criminal Procedure Code for purposes of consolidation is hereby revised. A withdrawal under Section 87(a) of the Criminal Procedure Code for purposes of consolidation with Criminal Case Number 2793 of 2012 is allowed.

The original file to be returned back to the subordinate Court for further action.

Ruling delivered dated and signed this **8th** day of **April, 2014**.

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M. MUYA

JUDGE

8TH APRIL, 2014

In the presence of:-

Learned State Counsel

Learned Counsel for the defence Mr. Gakuhi

Court clerk Musundi

M. MUYA

JUDGE

Court: Mention on **24th April, 2014** before the trial Court.

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M. MUYA

JUDGE

8TH APRIL, 2014