



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 100 OF 2003

REPUBLIC PROSECUTOR/RESPONDENT

VERSUS

JULIUS MBOYA BWETETE ACCUSED/APPLICANT

RULING

This matter was set aside for a ruling on no case to answer, on assumption that the prosecution had closed up its case. I have thoroughly gone through the record and noted the following:-

The typed proceedings on record are upto 7th May, 2012. Thereafter the matter has severally been placed before the Judge ostensibly for further hearing but in none of the dates has it proceeded. As at May, 2012, only two witnesses were remaining namely the doctor and the investigating officer. Hon. Justice Mshila granted the prosecution the last adjournment on 29th October, 2012. The matter was next fixed for hearing on 28th January, 2013 but court did not sit on this date. The Deputy Registrar fixed it for mention before the Judge on 13th February, 2013 but again on this day the Judge was away on official duties.

It was placed before me on 20th February, 2013 for mention for further orders. This is the first time I handled this matter. I directed that the proceedings be prove-read and fixed the matter for hearing on 16th April, 2013.

On 16th April, 2013, file was placed before Hon. Justice Ochieng. Defence counsel was unwell. The Judge fixed it for mention on 22nd April, 2013 to fix a hearing date.

On 22nd April, 2013, the matter was fixed for hearing by the Deputy Registrar on 9th July, 2013.

Unfortunately the next coram is for 9th August, 2013 and not 9th July, 2013. On this date 9th August, 2013, the matter was placed before me for hearing. Mr. Okara appeared for the accused and Mr. Mulati for the State.

Mr. Mulati was the first person to address court when he informed the court that he had filed submissions on a case to answer. Mr. Okara on his part told court that he did not wish to submit. I accordingly, fixed the matter for ruling on 31st July, 2013. By 31st July, 2013 I had not read the file and I pushed the ruling to 8th August, 2013.

From the above chronology, it is apparent that the matter was fixed for ruling pre-maturely. Pre-maturely because as at 9th August, 2013 when Mr. Mulati addressed the court to say he had filed

his submissions, the prosecution had not closed its case. The matter was still pending for hearing and at no time had the state counsel informed the court that he had closed his case.

Given this scenario, I am not in a position to write the ruling as expected. The case is still open for the prosecution to call its two remaining witnesses. They were granted a last adjournment and so if they do not avail the witnesses on the date that shall be fixed for hearing by the court, the court shall rule on whether they (prosecution) shall close their case.

At this juncture therefore, the best I can do is to fix the case for hearing. I further direct that the Deputy Registrar ensures that proceedings after 28th October, 2009 have been typed before the next hearing date. Parties had already agreed that the matter proceeds from where it had reached and pursuant to S. 200 (3) of the Criminal Procedure Code, I so order.

It is so ordered.

DATED and DELIVERED at ELDORET this 8th day of August, 2013.

G. W. NGENYE – MACHARIA

JUDGE

In the presence of: