

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIMINAL NO. 42 OF 2013

MARY GITONGA APPLICANT

VRS

REPUBLIC RESPONDENT

RULING

The applicant through an application dated 20th August 2013 sought an order that this court do call and examine the record before Meru Chief Magistrate Criminal Case No. 916 of 2013 for the purposes of satisfying itself to the correctness legality, properly and/or regularity of the proceedings before that court involving the applicant. The application is supported by applicant's affidavit dated 20th August 2013. The applicant deponed that on 20.2.2013 the trial court forced her to conduct and proceed with her case in absence of her advocate despite stating that her advocate was before another court. That the trial court refused to set aside its orders or stay the proceedings even after her counsel's application. The applicant prayed that this court do exercise its powers under section 362 and 364 of the Criminal Procedure code and alter the lower courts finding.

Mr. Moses Mungai, learned state counsel did not oppose the application.

Article 50 (2) (g) provides that every accused person has the right to a fair trial, which includes the right to choose and be represented by an advocate and to be informed of this right promptly.

I have carefully perused the trial court's proceedings and have found that indeed the applicant was forced to proceed without being represented by the counsel of her choice, and even when the counsel presented an application the same was rejected. This was violation of an accused constitutional rights and I find the application is merited. The application was not opposed.

The upshot of the matter is that the application is allowed. The proceedings of the trial court were not properly conducted. The order issued on 20.2.2013 is set aside. The applicant's counsel of her choice shall be allowed to take part in the proceedings and represent the applicant in the matter before the trial court.

DATED AT MERU THIS 31ST DAY OF OCTOBER 2013

J.A. MAKAU

JUDGE.