

REPUBLIC OF KENYA

IN THE HIGH COUET OF KENYA

AT MOMBASA

CRIMINAL CASE NO. 21 OF 2009

REPUBLIC PROSECUTION

VERSUS

CLINTON KIIO NZAMALU ACCUSED

RULING

The accused through his lawyer **MR. ATANCHA** has made an application to have his trial start de novo. This application was vehemently opposed by **MR. ONSERIO** for the State. A brief history of the trial so far will suffice. The accused was first arraigned in court on 4th June 2009. He entered a plea of not guilty to a charge of murder. His trial commenced before me on 24th April 2011 at which trial the accused was represented by **MR. OBARA** Advocate. On 15th December 2011 after a total of twelve (12) prosecution witnesses had testified the accused applied to be assigned a new lawyer claiming that he had no confidence in his lawyer. It is then that Mr. Atancha was assigned to take over the trial and made this application for a de novo hearing.

I find it very surprising that it is only after twelve (12) witnesses have testified and the prosecution is about to close its case that the accused '*suddenly realises*' that he has no confidence in his advocate. If this was a genuine complaint then he would have raised the issue far much earlier in the trial. Mr. Atancha claims that accused has been denied a fair trial. With respect I totally disagree. The accused has at all times been accorded his fair trial rights in line with the Constitution of Kenya. In any event the accused has not stated in what exact manner any of his trial rights have been violated. Likewise Mr. Atancha in declaring the services of his senior colleague to have been below par has not stated precisely how the former advocate's services were wanting. Mr. Obara has appeared in several matters before this court. He is a senior, respected and competent lawyer. I have no doubt that he gave this case his best just as he does in all cases in which he appears. Whilst I am mindful of the rights of an accused to counsel of his choice this very belated application for a de novo trial smacks of mischief. It is in my view frivolous, vexatious and amounts to an abuse of court process. The accused had competent representation from Mr. Obara and I have no doubt that he will continue to receive competent representation from Mr. Atancha. Justice must be done to both the prosecution and the defence. I see no reason to compel the State having already availed 12 witnesses to start searching for and re-bonding the witnesses who have already testified. In short I find no merit in this application for a de novo trial and the same is hereby dismissed. I hereby direct that this trial proceed to its logical conclusion.

Dated and delivered in Mombasa this 5th day of April 2012.

M. ODERO

JUDGE

In the presence of:

Mr. Odhiambo holding brief for Mr. Atancha

Mr. Gioche for State

