



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

MISC. APPL. NO.47 OF 2010

PATRICK LUMUBA.....APPLICANT

VRS

REPUBLIC.....RESPONDENT

RULING

The Applicant in his application dated 14/12/2010 seeks for orders that the proceedings in Bungoma CM CR. No.2930 of 2009 be terminated as the case has delayed due to laxity on part of the prosecution. The grounds supporting the application are that the case has taken 14 months in court and only two witnesses have been heard. The Applicant also complained that he was denied the supply of witness statements when the two witnesses were heard. The reason given by the prosecution was that the police file went missing for some months.

The application was opposed by the state on grounds that since two witnesses have now been heard and that the next hearing is scheduled for 28/5/2011, the state should be given an opportunity to avail the other witnesses and have the case concluded without further delay. However, the state counsel Mrs. Leting admitted that there has been delay on part of the prosecution caused by the misplacement of the police file at the station.

The court has perused the lower court record in CM CR. No.2930 of 2009 and made a few observations. The case was registered in Busia Senior Principal Magistrate Court on 6/10/2008. The accused person applied for transfer of the case from Busia to any other court on the ground that the complainant was a police officer working in Busia Court Prosecution's Office. It took some time for the accused to obtain the transfer order from the High Court and this caused the case to be adjourned several times. The accused also applied for adjournment a few times for the reason that he wanted to be supplied with a P3 form and be provided with witness statements. When he was provided with the statements the accused made another application for adjournment to go and read the statements. On that day, the prosecution had four witnesses in court ready to testify but the court indulged the accused. The order of

transfer was given by the Busia High Court Judge of 7/10/2009 and was registered in Bungoma Court in October 2009. It is in Bungoma Court that the matter was adjourned several times due to failure by the police to produce the police file. The case then started afresh and two witnesses have now been heard. That brief background shows that although the prosecution is responsible for the delay of case, the accused has also contributed to the delay to some extent. This case is scheduled for hearing on 28/5/2011 which is only two months away. I concur with the state counsel that the prosecution should be given another chance to avail all the witnesses to enable the court conclude the case. I believe that since the police file is now available the prosecution has no reason to delay the matter any further. Courts have a duty to ensure that criminal cases are heard expeditiously in compliance with Article 50 and 51 of the Constitution.

At the time that the case was heard afresh, the accused had been supplied with witness statements. His constitutional rights were therefore not violated since the earlier evidence of the two witnesses is now not a part of the evidence.

I decline to grant the orders sought in this application to terminate the criminal proceedings against the accused. However, the trial court is directed to ensure that the case is heard expeditiously to avoid further delay. All the remaining witnesses shall be availed to court on the 28/5/2011 and thereafter the case be concluded within 60 days from that date. Should the prosecution and the court fail to meet that deadline the criminal proceedings in CM CR. 2930 of 2009 shall be terminated automatically.

The trial magistrate shall be served with a copy of this ruling.

F. N. MUCHEMI

JUDGE

Ruling dated and delivered this 18th day of May 2011 in the presence of the Applicant and the state counsel Mr. Ogoti.

F. N. MUCHEMI

JUDGE