



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CRIMINAL CASE 24 OF 2005

REPUBLIC PROSECUTION

VERSUS

JANGAA MUNYAMBO ACCUSED

RULING

The prosecution through the learned State Counsel Mr. Onserio have made an oral application to file a new and consolidated murder information to include a second accused person SULEIMAN MWAMUMBO MUNYAMBO. Learned counsel for the Accused JANGAA MUNYAMBO has strenuously opposed this application to consolidate the charge sheet citing several reasons in support thereto.

Firstly counsel for Accused Mr. Hayanga argues that such a move would be prejudicial as against the Accused in that it amounts to bringing new charges against the Accused after his trial had commenced. This is indeed permissible under 135 Criminal Procedure Code Cap 75 Laws of Kenya. However I have perused the proposed new information and I do note that all it proposes to do is to include an additional accused person. The charge which the Accused faced remains exactly the same as it was in the previous information. As such I find no merit in this argument.

Secondly defence counsel argues that to consolidate the charges at this point would be “*unfair and embarrassing*” to the Accused who has been in custody for four years awaiting the conclusion of his trial.

I have perused the record and I note that indeed this matter commenced in July 2005. It is therefore quite correct that the Accused has been in custody for about four years. This is indeed regrettable but the blame for such delay cannot be laid exclusively at the feet of the prosecution. The fact of the matter is that the case did commence and indeed my learned Senior Hon. Justice Sergon heard a total of five (5) witnesses. However the hearing was cut short due to the transfer of His Lordship from Mombasa to Nyeri Law Courts. This is an occurrence that cannot be blamed on any party. This was a normal transfer which unfortunately resulted in the learned Judge being unable to complete this case. This delay has not been malicious nor intentional. As Mr. Onserio for the State pointed out the statute of limitations does not affect a charge of murder. I am sure that the succeeding court will endeavour to conclude this trial as expeditiously as possible.

Lastly defence counsel points out that the proposed new information which was served upon him does not include the name of his client as one of those to be charged. The response of the State Counsel is that this is an inadvertent error. The proposed new information has not yet been received by nor filed in court. This is an error which in my view can be easily rectified. The upshot is that I do find that the interests of justice would best be served by allowing the State’s application to consolidate the information to include a second accused person. I hereby direct that the State do file and serve the new proposed information within a period of seven (7) days from today’s date. Deputy Registrar to assign counsel to the second accused person. Psychiatric Report to be availed within (7) days. Mention on 1st March 2010 for plea.

Dated and Delivered in Mombasa this 15th day of February 2010.

M. ODERO

JUDGE

Read in open court in the presence of:

Mr. Monda for State

Mr. Hayanga for Respondent

M. ODERO

JUDGE

15/2/2010