

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CRIMINAL CASE NO. 19 OF 2000

REPUBLICAPPELLANT

VERSUS

OMAR SAID AWADH.....ACCUSED

Coram:

Ademba for the state

Mulongo for the Accused

Kinyua Court clerk

COURT RULING

This court has been urged to adjourn the hearing of this case on the ground that witnesses were not bonded because the investigating officer did not hand over the Police file when he was transferred from Mariakani Police Station to Bungoma Police Station. I have also been urged to summon the O.C.S. to give an explanation. The application for adjournment is opposed.

I have considered the reason advanced in support of the application for adjournment and I am not convinced that the same has merit. I reject the application for adjournment.

I have also been urged to summon the O.C.S. Mariakani Police Station to appear to explain. I believe this will be an exercise in futility because he has already given the reasons to the learned State Counsel. In a nutshell, the O.C.S. has failed in his duties because he could not have cleared P.C. Alfred Kivvaso before handing over such vital information. I am not ready to entertain the prayer because the answer is already known. Blame squarely lies on the O.C.S. and the state law office. In fact the learned state counsel had to apply for this matter to be adjourned to enable him get in touch with his men on the ground. They were not here yesterday though the defence counsel, a Mr. Gichana was also absent. The accused has been in custody since 1999.

Since the prosecution have no evidence to support the charge then at this juncture the accused is found not guilty. He is acquitted under Section 306 of the Criminal Procedure Code. He should be released forthwith from custody unless lawfully held. The assessors serving in this case are hereby discharged and should be paid yesterday's and today's allowance.

Dated and delivered this 21st day of February 2006.

J.K. SERGON

J U D G E