



REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL REVISION 2 OF 2005
1. MURIMI TUMBO
2. IBRAHIM MUTWIRI NJAGI
3. JACOB KANYARU JULIUS.....APPLICANTS
AND
REPUBLIC OF KENYA.....RESPONDENTS
RULING ON REVIEW

This ruling has to be read with my ruling dated 17th February, 2005 which is found in this file.

I have now received the full record of Marimanti Criminal Case No. 238 of 2003 together with a written explanation from Mr. A.N. Kimani Ag. Principal Magistrate, now stationed at Chuka. The position appears to be as follows: -

Applicant, Murimi Tumbo was jointly charged with two others, Ibrahim Mutwiri Njagi and Jacob Kanyaru Julius, with the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code. In the middle of the trial the last two felt that they would not receive a fair trial before the Marimanti Magistrate Mr. A.N. Kimani. They promptly sought for a transfer of their case to Meru Law Courts. But the applicant Murimi Tumbo did not express the same view and was comfortable to have his trial completed at Marimanti. The honourable trial magistrate conceded to the 2nd and 3rd accused's application and transferred the case to Meru Law Court where it was reregistered as Cr.Case No.1484 of 2004. It contained a copy of proceedings until the case was transferred.

Meanwhile, the trial at Marimanti court presided over by the honourable Magistrate Mr. A.N. Kimani proceeded to its end when the Magistrate convicted the accused, the applicant herein of robbery with violence and sentenced him to death as provided by law. The prisoner was then committed to Meru G.K. Prison to serve sentence and a proper committal warrant was prepared and served.

It would however appear that the applicant who was now a convicted prisoner, was again produced in Meru Law Courts under Cr. Case No.1484 of 2004 with his former two co-accused who had been earlier transferred to Meru for a fresh trial of the charge of robbery with violence. This would obviously mean that he was being tried for a similar charge the second time over.

I have carefully examined all the Marimanti Cr. Case No. 238 of 2003 records. It shows that the 2nd and 3rd accused in the case who are Ibrahim Mutwiri Njagi and Jacob Kanyaru Julius, applied for the transfer of their case on 29.4.04. They got it the same day. The applicant herein however said that he had no problem with the court. The trial magistrate had stated thus: -

“Court. In view of the complaints by the 2nd and 3rd accused and in the interests of justice, I order this file transferred to Meru Law Courts. This file be placed before the C.M. Meru for reallocation in respect of 2nd and 3rd accused. Mention on 13.5.04. 1st accused case to continue as he is comfortable with the court handling of case.”

It will be noted that the honourable trial magistrate exercised the power of transfer of the case from his court to another court which has higher jurisdiction than his court. Secondly he casually split the case into two and purported to transfer the case before him which was Marimanti P.M. Cr. Case No.238 of 2004 to Meru Chief Magistrate’s Court. A few issues arise from this act of the honourable magistrate. Did he have the power to split the case in the casual manner he did? Which case remained before him for further trial if he sent Marimanti Cr. No.238 of 2004 to Meru Law Courts? Was it tenable for the trial Magistrate to split the case without the full participation of the prosecution whose case it was? How would a transfer of the full case to Meru have prejudiced the applicant? All he expressed was that he had no complaint against the Marimanti trial Magistrate. He did not specifically call that the trial should proceed there. Did the honourable trial magistrate consider the fact that one of the ingredients of the charge before him could be that the suspect at the time of the offence was in the company of another or more thieves? I have carefully considered the proceedings in this case and the issues arising. There is no doubt that the applicant herein was convicted of the charge of robbery with violence contrary to S. 296(2) of the Penal Code on 4.6.2004. He was on the same day given the sentence of suffering death.

It is not clear from the records whether by then the court file ordered transferred to Meru Law Courts on 29th April, 2004 had been dispatched or not. It is not clear also that if the file No.238/04 had been dispatched, which records or file then did the honourable Magistrate use to take further evidence and/or to write his judgment in? What is clear however is that a written judgment has on orders of this court, been produced before this court. What is clear also is that the applicant should not be subjected to a fresh trial in respect of the same charge and on same facts. It is not clear as earlier stated, how the applicant found himself before the Chief Magistrate at Meru on a similar charge, if that be the true situation.

What this court can do at this stage is to prevent another trial taking place on the same charge and facts. Accordingly I make the following interim orders: -

ORDER

1. This matter to be mentioned before this court on 28th April, 2005 for further directions.
2. State Counsel to fully inform and seize himself of the case and issues arising therein for the purpose of guiding the court.
3. Marimanti P.M. Cr. Case No.238/04 file and Meru C.M. Cr. Case No.1484/04 file to be annexed to this file during the mention.
4. No further proceedings to be entertained against the applicant until further orders.
5. Production orders to issue for the above date against the three accused persons in CM. Cr. Case No.1484 of 2004 who should include the applicant herein.
6. If any appeal has been filed for the applicant, the same to be also annexed to this file.
7. State Counsel and Mrs. Ntarangwi to be present on 12th April, 2005 and on 28th April, 2005

Dated and delivered at Meru this 12th day of April, 2005

D. A. ONYANCHA

JUDGE