



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

CRIMINAL CASE 30 OF 2000 (1)

REPUBLICPROSECUTOR

VERSUS

JOHN MUTHOKA SURIACCUSED

R U L I N G:

This criminal case was brought to this court for trial on 17/10/2000. The trial has not been completed yet. It was conducted by a judge who left the station and then retired from the Bench.

A second trial was commenced and several witnesses have been recalled to give evidence afresh. The hearing of this trial was fixed for 5/9/05 on which date the state was unable to produce further evidence. The court ordered the trial to continue and proceed today.

Now at 2.30 p.m. the State Counsel prosecuting brings to court a Nolle Prosequi under Section 26 (3) (c) of the Constitution and Section 82 (1) Criminal Procedure Code Cap. 75.

This notice is intended to terminate this case as against the accused person.

The State Counsel states that the state does not intend to charge the accused again.

However, Section 82(1) Criminal Procedure Code has a sting to it namely “that discharge under this section of an accused person shall not operate as a bar to subsequent proceedings against him on account of same facts”.

The constitution section 77 also guarantees a trial within a reasonable time.

It is my view that the Attorney General is misusing his powers granted in the prosecution of this criminal case. It has taken the prosecution 7 years to complete this trial and all this time the accused has remained in custody. This is not fair it is highly prejudicial to continue keeping him in suspense whether he will again be arrested on the same facts. It is notorious that the living condition in our jails is horrible.

The accused is entitled to reasonable period of his case to be finalized. This case is being tried with assistance of 3 Assessors- members of public. It is reasonable and fair to seek their opinions on this issue.

The laws are made for the benefit of the members of public in this country. I am not bound by their opinions but in my view their opinions should be sought. The State is not prejudiced in the circumstances. As it is their opinions is similar to mine.

I find it unreasonable unfair and misuse of Powers granted to the Attorney General to take steps to prolong these charges by entering a Nolle Prosequi.

I do not accept the Nolle Prosequi now offered by State Counsel and I order that the prosecution do proceed in normal way.

Delivered and dated this 6th day of September 2005.

J. KHAMINWA

J U D G E

Mr. Ademba:

I request for copy of proceedings and Ruling.

Court:

Let the same be provided as soon as possible.

The trial to proceed .

Mr. Ademba:

I do not have any witnesses to day.

Mr. Chizipha:

I say they close their case.

Court:

Seeing that the prosecution has no further witnesses the proceedings shall move to section 306 Criminal Procedure Code.

Mr. Chizipha:

I have no submissions to make.

Mr. Ademba:

I have not closed my case.

Ruling under section 306 Criminal Procedure Code by Court Shall be delivered on 7/9/05 at 8.30 a.m.

KHAMINWA, J

Remanded in Custody. Production Order to issue.

Assessors to be paid today and to appear on 7/9/05 for the Ruling.

J. KHAMINWA

J U D G E