



REPUBLIC OF KENYA

IN THE HIGH COURT AT KITALE

CRIMINAL REVIEW NO 2 OF 2003

REPUBLIC..... PROSECUTOR

VERSUS

LIMANYANG.....ACCUSED

ORDERS

The High Court is vested with powers under the provisions of section 362 of the Criminal Procedure Code to call and examine the record of any criminal proceedings before any subordinate court for the purposes of satisfying itself as to the correctness, legality or propriety of any finding sentence or order recorded or passed and as to the regularity of the proceedings in the case in the subordinate court.

The provisions of section 363 (1) of the Criminal Procedure Code, also empowers a subordinate court of the first class to call and examine the record of any criminal proceedings of a court of lower class than it which is established within its local limits of jurisdiction for the same purposes as given by the provisions of section 362 of the said Code. By the provisions of section 362(2) of the Criminal Procedure Code, if the subordinate court acting under the provisions of the section 363(1) finds that the proceedings of the lower court than it are illegal, or improper or that they are irregular then it is obligatory for that court of first class to forward the record with its remarks therein to the High Court.

The Court of the Senior Principal Magistrate in this registry has examined the record from the Court of the Senior Resident Magistrate for the purposes of having the orders made by the Senior Resident Magistrate on

3/6/2003 be revised.

The order forwarding the lower court record reads as follows:-

“The above named accused person was charged with the offence of murder. And on 3/6/2003 the SRM Court

3 in her ruling reduced the murder charge to manslaughter. Under the provisions of section 233 and section 234 of the Criminal Procedure Code (cap 75) the lower court may either discharge under section 233 or convict under section 234. I therefore forward the lower court record to you under section 363 CPC for revision of the said orders.

The action taken by the Senior Principal Magistrate’s Court in forwarding the record of the Senior Resident Magistrate’s Court to the High Court is quite in order and is in consonance with the provisions

of section 363 (2) of the Criminal Procedure Code as read together with the provisions of section 363(1) of the said Code.

I have looked at the record of the proceedings that took place on 3/6/2003 before the Senior Resident Magistrate's Court; and this what her ruling states:

“Having perused the committal bundles in respect of the accused herein Loton Limanyang, this court rules the charge of murder cannot stand. The accused and others not before court were on a robbery with violence mission and only after the deceased tried to resist entry did one of them fire the fatal bullet killing her instantly.

The malice aforethought is absent. The charge is reduced to manslaughter and the accused to be dealt with as per the law.”

The power to deal with the committal proceedings by the subordinate courts is donated by the provisions of section 232, 233, 234 and 235 of the Criminal Procedure Code.

Under the provisions of section 232 (2), the magistrate is required to read the committal bundles and if he considers there is sufficient evidence to commit the accused to the High Court for trial, he shall frame the charge, read it over to the accused and do the necessary explanation that the accused need not reply.

If however the magistrate considers that there is insufficient evidence having read the committal documents to warrant the accused being committed to the High Court, he should then act in accordance with the provisions of section 233(2) of the Criminal Procedure Code and discharge the accused. These provisions state:-

“Where having read the committal documents the magistrate considers that there are insufficient grounds for committing the accused person for trial, the magistrate shall discharge him.”

Where however the trial magistrate has read the committal documents and he considers that the evidence is sufficient to sustain a charge of murder and on complying with the provisions of section 232(2) of the Criminal Code, he must commit the accused person to the High Court for trial.

The provisions of section 234 of the Criminal Procedure Code state:

“Where having read the committal documents the magistrate has decided that there is sufficient evidence to commit the accused person for trial and has complied with section 232 the magistrate shall commit the accused person for trial before the High Court and shall, until the trial, admit him to bail or remand him in custody, and the warrant of the Court shall be authority to the officer of a prison appointed for the custody of prisoners committed for trial, whether or not the prison is in the jurisdiction of the Court”

The two sections, section 233 and section 234 do not give the magistrate the latitude to reduce a charge of murder to that of a manslaughter upon the reading of the committal documents. He either discharges under section

233 CPC, if the evidence is insufficient or, commits the accused to the High Court under the provisions of section 234 CPC, if there is sufficient evidence to sustain the charge of murder. The reduction of the charge from murder to manslaughter by the learned Senior Resident Magistrate was wrong in law as she did not have the powers to do so.

Consequently the order made on 3/6/2003 is hereby revised and set aside. It is hereby ordered that the committal documents be properly read to the accused person by another magistrate and appropriate orders made.

Dated and delivered at Kitale this 18th day June, 2003

P.K.K. BIRECH

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COMMISSIONER OF ASSIZE