

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CRIMINAL CASE NO 63 OF 2002

MWAURAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused person was arrested and arraigned in court on the 13th day of March 2003. He pleaded not guilty to the charge of murder. At the hearing the prosecution called and tendered evidence from eight (8) witnesses so far. Further hearing was scheduled for 20th November, 2003.

On 15th October 2003 the learned trial judge was suspended by His Excellency the President of the Republic of Kenya through Gazette Notice No 7282 of 2003.

Concomitantly with the suspension His Excellency the president appointed a tribunal to investigate his conduct along with other 23 judges who were equally suspended. The hearing of the tribunal is scheduled for December 2003. When the file was placed before me on 3rd December 2003 Mr Opolo for the accused drew my attention to the anomaly in our law that in the High Court there is no provisions for continuance of the case in the event the presiding judge ceases to have jurisdiction. He opined that in those circumstances this court should declare the trial a mistrial. In this regard he referred me to Nairobi HCCR Case No 18/2000: *Republic – vs- Stanley Njoroge Munene & 12 others* for the proposition that where a trial judge ceases to have jurisdiction the trial must be declared a mistrial. Osiemo J in *Republic –vs- Stanley Njoroge Munene* had this to say in similar circumstances:

“... I agree with counsel that the trial of the accused person cannot be tied to the uncertain destiny of a particular judge who is now awaiting investigations ...”

I adopt those words of wisdom while I sympathise with the plight of the accused person I share the view that the ends of justice will be better by a declaration that the trial is a mistrial.

In the premises I declare the trial before Waki J, a mistrial. Accordingly I order that the accused person be discharged. In the peculiar circumstances of this case I order that the state be at liberty to prefer fresh charges against the accused person if it so wishes. It is ordered.

Dated and delivered at Nairobi this 19th December, 2003

N.R.O. OMBIJA

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JUDGE