



**Republic v Abongo (Criminal Case E036 of 2021)
[2024] KEHC 76 (KLR) (17 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 76 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E036 OF 2021
RE ABURILI, J
JANUARY 17, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH OMOLLO ABONGO ACCUSED

RULING

1. This is a 2021 case and no single witness has testified. The case was registered on November 29, 2021. Plea was taken on 7th December 2021. No witness statements and documents were served on the defence counsel until June 22, 2022, over six (6) months after the plea was taken.
2. The accused person could not raise bond so he remained in custody until October 24, 2023 when this court granted him a free bond when the prosecution claimed that they had released witnesses to go away after High Court 2 referred the matter to this court for hearing. The date of 2October 4, 2023 was given on March 7, 2023.
3. Today's date was given on October 24, 2023 when Mr. Ogutu counsel for the prosecution held brief for Ms. Manyal saying the witnesses had left.
4. Today, there are no witnesses and the prosecution counsel appearing claims that a new prosecution counsel assigned to this court is indisposed.
5. The defence opposes the application for adjournment this being an old case and no reasons are given for absence of witnesses. In addition, Mr. Okoth submits that it is not clear when the new counsel had a briefing with witnesses who are not here and that the prosecution should indicate if witnesses are coming so that we wait for their arrival.
6. The prosecution counsel clearly submitted that the witnesses are not present and are not coming to court.



7. I have considered the application for adjournment and the reasons advanced. It is clear that the prosecution office, Kisumu, has decided to carry out internal reorganization of prosecution counsel to the inconvenience of the court which has extremely old cases where no witnesses have testified for many years.
8. The prosecutor who is alleged to have been assigned to this court has never appeared before this court, though he is now said to be indisposed. The witnesses are absent.
9. Article 159 of *the Constitution* abhors delay. The accused person's right to a speedy trial is guaranteed by *the Constitution*. The rights of the victims of crime too are guaranteed.
10. However, the prosecution cannot be allowed to procrastinate and place barriers to the conclusion of cases pending in court by changing prosecutors from time to time and not availing witnesses. The prosecutor who is in court today was also present yesterday when taking a plea in a fresh matter and the court had to send the Investigating Officer to go and get a prosecutor, with threats to discharge the accused person before a prosecutor was availed to this court.
11. This court cannot be taken for a ride when it fixes cases for hearing only to find no prosecutor or witnesses when the ODPP has many prosecution counsel who can appear and prosecute a matter where a hearing date was taken by consent over three months ago and in a 2021 matter.
12. I find the application for adjournment devoid of merit. I decline to grant an adjournment and direct that the case proceeds to hearing.
13. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 17TH DAY OF JANUARY, 2024

R. E. ABURILI

JUDGE

