



**Republic v Mbogo (Criminal Case 10 of 2015)
[2024] KEHC 12874 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12874 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL CASE 10 OF 2015
LM NJUGUNA, J
OCTOBER 23, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

PETER NJERU MBOGO RESPONDENT

RULING

1. The respondent was charged with the offence of murder contrary to section 203 as read together with section 204 of the Penal Code. He was released on a bond of Kshs.300,000/= with a surety of a similar amount. The trial commenced and when the prosecution closed its case, the respondent was placed on his defense and he sought time to look for another advocate since he had terminated the services of the previous advocate. After that, the matter was adjourned severally and he eventually failed to appear before court in the subsequent proceedings.
2. A warrant of arrest was issued against him and the surety was summoned to court on several occasions before the investigating officer was summoned. The investigating officer stated that he has been unable to arrest the respondent and the matter was being handled by the Directorate of Criminal Investigation. The Embu Criminal Investigations Officer sought time to execute the warrant of arrest and the surety was called upon to show cause why the security he gave should not be forfeited. The respondent has absconded for a period of 1½ years and he has abrogated his constitutional right to be present during his trial.
3. In the circumstances, the applicant filed a notice of motion dated 15th August 2024, seeking the following orders;
 1. Spent;
 2. That this honourable court be pleased to dispense with the personal attendance of the respondent/accused person for the remainder of this trial;



3. That this honourable court be pleased to allow the proceedings herein against the respondent/accused person to proceed in his absentia;
 4. That further to orders (1) and (2) above, warrants of arrest against the respondent/accused person to remain in force;
 5. That this honourable court be pleased to issue an order that upon apprehension of the respondent/accused person at any time in future, if he shall have been convicted, the sentence to commence from the date of such apprehension; and
 6. That this court be pleased to issue such orders as it may find fit and just to grant.
4. The court directed the applicant to file its written submissions, through which it argued that Article 50(2)(f) of *the Constitution* gives the accused person a right to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed. It relied on section 194 and 206(1) of the Criminal Procedure Code where the law demand that the personal presence of an accused person charged with a felony is necessary but can be dispensed with under Article 50(2)(f) of *the Constitution*. It also relied on the cases of Republic v. Galma Abargo Shano (2017) eKLR, Bett v. Republic [2023] KEHC 27034 (KLR), Republic v Joshua Chacha Moronge [2019] KEHC 79 (KLR) and Republic v Teteror [2023] KEHC 18592 (KLR) where the courts held that the personal presence of an accused person can be dispensed with where his deliberate conduct causes him to voluntarily absent himself.
 5. The issue for determination is whether the application has merit.
 6. The respondent absconded and has failed to appear before court for hearing of his defense. Warrants of arrest were issued against him and the investigating officer deposed that the warrants have not been executed. The court accorded the respondent several opportunities to tender his defense but he has absented himself from the proceedings and he has not been traced to date.
 7. Article 50(2)(f) of *the Constitution* gives the accused person a right to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed. Section 194 of the Criminal Procedure code provides that except as otherwise expressly provided, all evidence taken in a trial under this Code shall be taken in the presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his advocate (if any). In this case, the respondent had withdrawn instructions from his advocate and he had asked the court for time to instruct another one.
 8. In the process of the numerous adjournments before the defense case, the respondent absconded and has not been traced since. It is evident that the respondent has deliberately profiled himself as one whose conduct has made it impossible for the trial to proceed in his presence. In the case of Republic v Teteror [2023] KEHC 18592 (KLR), the court stated;

“For a Court to take refuge in Article 50(2)(f) of *the Constitution* and proceed on with a trial in the absence of an accused person the Court must first be satisfied that such inability to proceed with the trial is caused by the deliberate conduct of the accused person. That therefore means if the Court forms the opinion that the delay is not caused by any deliberate conduct on the part of the accused person then the trial cannot legally proceed in the absence of the accused person.”
 9. In my view, this is a ripe case for the court to proceed with the trial in the absence of the accused person considering the number of adjournments granted in his favour.



10. I find that the application has merit and it is hereby allowed. Orders (2), (3), (4) and (5) of the application are granted as prayed.

11. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 23RD DAY OF OCTOBER, 2024.

L. NJUGUNA

JUDGE

.....for the Applicant

..... for the Respondent

