

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 6 OF 2014

REPUBLICPROSECUTOR

VERSUS

BENARD LICHUMA TUNGAACCUSED

RULING

1. This matter came up for hearing on the 28/1/2020 when the State Counsel Mr. Mutua applied for adjournment on the grounds that he did not have the police file and that there were no witnesses present. Miss Ashitsa, learned counsel for the accused opposed the application on the grounds that the case was filed in 2014 and that since then no witnesses have ever testified. That on 8/10/2019 Justice Musyoka had given last adjournment in the case.

2. I have perused the court file. The case was filed in 2014. Since then it has had not less than a dozen hearings. During that time some witnesses did appear in court on 16/9/2014, 2/11/2015 and 11/5/2016. However on all these occasions the case was adjourned for non-appearance by the defence counsel.

3. Miss Ashitsa was appointed to act in the matter on 6/6/2018. Since then there has been some 7 adjournments. Two witnesses did turn up on 4/7/2018 but Miss Ashitsa was not present. Since that date witnesses have not turned up on subsequent hearings on 23/10/2018, 29/1/2019, 5/3/2019, 20/5/2019, 8/10/2019 and 28/1/2020. It is during this time that Justice Musyoka gave a last adjournment on 8/10/2019.

4. I have considered the application for adjournment and the objection thereto by Miss Ashitsa. The accused made his first appearance in court on 29/1/2014. The case has therefore been hanging over his neck for the last 6 years. The Constitution expects the accused to be accorded a speedy and expeditious trial. A delay of 6 years in the trial is not excusable. In my considered view the prosecution has been given sufficient time to prosecute the case and they have failed to do so.

5. The upshot is that the application by the State Counsel for adjournment of the matter to another date is declined.

Delivered, dated and signed in open court at Kakamega this 20th day of February, 2020.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Mutua for State

Miss Ashitsa for Accused

Accused – present

Court Assistant - Polycap

14 days right of appeal.