



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL REVISION NO. 32 OF 2019

WILSHAM MALELE ABONG'O . 1ST APPLICANT

EMILY AMATIKA MALELE..... 2ND APPLICANT

GEORGE NAMALE AMALELE... 3RD APPLICANT

RUTH AMWAYI OLUTEYO.....4TH APPLICANT

JOHNSTONE SECHE AURA..... 5TH APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The lower court's file has been placed before me following my ruling dated 6/11/2019. This is with a view of this court satisfying itself as to the correctness, legality or propriety of the trial magistrate's ruling dated 27/9/2019.

2. I have perused the ruling of the trial magistrate, Hon. B. Ochieng, delivered on 27/9/2019. In the said ruling the learned magistrate declined to grant an adjournment to the prosecution on the grounds that the case had been adjourned three times in a row without the prosecution availing its witnesses. Moreso that the prosecution had been given a last adjournment in the case. That the case was filed in 2015 and the accused had been attending court religiously. That the accused were entitled to a fair hearing without unnecessary delay in the hearing of their case.

3. A trial court reserves the discretion on whether or not to allow an adjournment. Section 205 of the Criminal Procedure Code (CPC) provides that:-

“(1) The court may, before or during the hearing of a case, adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present.....”

4. The provisions of the above section were emphasized by Ouko J. (as he then was) in **Republic –Vs- Meshek Muyuri (2007) eKLR** where he stated that:-

“There is, therefore legal basis for adjournment of criminal trials. However, in granting an adjournment, the court must not do so as a matter of course. There must be sound justification for granting an adjournment in a criminal case as the suspect is entitled under Section 77 of the Constitution to a fair and speedy trial.”

5. As stated in my earlier ruling in this matter, a court while exercising its powers of revision under Section 362 of the Criminal Procedure Code should take care not to turn a revision into an appeal. I stated that a revision should only be limited to rectifying a manifest error in the proceedings.

6. The trial magistrate gave reasons why he was not in favour of granting an adjournment in the case. Section 205 of the CPC gave power to the magistrate to allow or to decline an adjournment. There was no manifest error or irregularity in the decision of the magistrate. The magistrate did not act in excess of his jurisdiction. Whether the magistrate erred in his decision can only be a subject of an appeal but not revision. In the premises I see no reason to interfere with the decision of the trial court.

7. The upshot is that the stay orders granted by this court in respect to Kakamega CMC Criminal Case No. 1692/2015 by this court's ruling dated 16/11/2019 are set aside. The trial magistrate is thus at liberty to proceed with the hearing of the case.

Delivered, dated and signed at Kakamega this 21st day of May, 2020.

J. N. NJAGI

JUDGE

In the presence of:

No appearance for Applicants

Mr. Mutua for State/Respondent

Applicants - Absent

Court Assistant - Polycap

14 days right of appeal.