



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL CASE NO. 39 OF 2015**

**REPUBLIC .....DIRECTOR OF PUBLIC PROSECUTIONS**

**VERSUS**

**ALI INGOSI WERE.....ACCUSED**

**RULING**

1. When this matter came up for hearing on 14<sup>th</sup> October 2019, there was no state prosecutor in court, and Mr. Shifwoka, advocate for the accused, invited me to consider dismissing the criminal case on account of non-attendance and want of prosecution by the state and the complainant.
2. The Criminal Procedure Code, Cap 75, Laws of Kenya, does empower the court to dismiss a case where the complainant fails to attend court. See sections 202 and 206.
3. I have gone through the record before me. The matter has come up for hearing several times. It first came up on 17<sup>th</sup> May 2016, when it was adjourned for lack of witnesses. It came up next on 10<sup>th</sup> May 2017, four witnesses were in court, but the state sought adjournment for mental evaluation of the accused. On 24<sup>th</sup> October 2018, the state had three witnesses, but the matter was adjourned for Mr Shifwoka to be supplied with witness statements. The matter proceeded on 31<sup>st</sup> January 2019, when two witnesses testified. On 8<sup>th</sup> April 2019, the state had one witness, the matter was adjourned because the trial court was not sitting.
4. From the above, it cannot be said that the prosecution has had a really bad record of not attending court or not availing witnesses or causing adjournments. I shall accordingly allow the state a second chance. I shall exercise discretion under section 206 of the Criminal Procedure Code, and direct that the matter be fixed for hearing for the prosecution to avail their remaining witnesses.
5. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 11TH DAY OF DECEMBER, 2019**

**W. MUSYOKA**

**JUDGE**