



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAROK**

**CRIMINAL CASE NO. 11 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JACKSON SAIKIAGA LEKUTIT (ALIAS JACK) .....1<sup>ST</sup> ACCUSED**

**JOSPHAT KAISAIYE LEKUTIT .....2<sup>ND</sup> ACCUSED**

**NO. 2013054785 APC VINCENT GITONGA KIRINYA.....3<sup>RD</sup> ACCUSED**

**RULING**

1. I have considered the adjournment sought by the prosecution on the basis that the two witnesses namely Kool Koroe and Moses Lekutit failed to show up in court as required of them by the summonses. She therefore applied for warrants of arrest.

2. Mr. Mongeri for Accused 1 and Accused 2 and also holding brief for Ms Mogere for Accused 3 opposed the application on the basis that the signatures on those summonses and those on their witness statements are different.

3. Secondly, he opposed the application on the basis that the court is being invited to be partisan in the trial, when its duty is to remain neutral and to take evidence only.

4. I reply to that Ms. Nyaroita responded by submitting as follows. The court is not being invited to be partisan but to play its role of wanting to know why the witnesses did not show up.

5. She also replied that Mr. Mongeri is not an expert on signatures and therefore cannot tell whether there are differences between the signatures of the two witnesses on their summonses and those on their witness statements.

6. I find that once a court issues summonses, they must be obeyed. Disobedience to court orders may amount to *prima facie* contempt of court that is punishable. It is therefore the duty of the court to enforce its orders in respect of those summonses. Failure to do so, will bring the administration of justice into disrepute.

7. Furthermore, it is essential that the witnesses be brought to court to explain their failure to attend court. Furthermore, I have looked at the summonses and I find that they direct the witnesses to attend court and to remain in attendance until they are discharged. It is therefore immaterial that the witnesses were only required to attend court on 9/12/2019 and not 10/12/2019.

8. Furthermore, this is a murder case in which the public and the state have an interest to ascertain whether the offence was committed or not. Additionally, I agree with Ms. Nyaroita that Mr. Mongeri is not a hand writing expert and cannot therefore tell whether the signatures on the summonses are different from those in the statements of the witnesses. I therefore find that the interests of justice demand that the warrants of arrest have to issue in respect of those two witnesses. I therefore grant the adjournment sought.

Ruling dated, signed and delivered in open court at Narok this 10<sup>th</sup> day of December, 2019 in the presence of all the accused persons, Mr. Mongeri for accused 1 and 2 and also holding brief for Ms. Mogere for accused 3, Mr. Okinyi holding brief for the victims and Ms Nyaroita for the state.

**J. M. Bwonwong'a**

**Judge**

**10/12/2019**