



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL REVISION NO. 17 OF 2018

KINOTI MUSA NURU.....1ST APPLICANT

DENNIS KARANI.....2ND APPLICANT

MARTIN MWENDA.....3RD APPLICANT

VICTOR MUGENDI.....4TH APPLICANT

MICA MUGOI.....5TH APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. On 21st May, 2015, the applicants arraigned before the Chief Magistrate's Court, Meru with a charge of robbery with violence contrary to **section 296(2) of the Penal Code, Cap 63 Laws of Kenya**. It was alleged that on the 15th day of November, 2014 near Kinoru stadium in Imenti North District of Meru County, the applicants jointly with others not before court, while armed with dangerous weapons namely, G3 riffle and a pistol robbed Alpa Alpesh Karaniya of cash Kshs.800,000/= and immediately before such robbery used actual violence on the said Alpa Alpesh Karaniya while using a motor vehicle registration number KBS 437X make probox white in colour.
2. The applicants denied the charge and their trial began on 8th July, 2015 before Hon. Kutwa Principal Magistrate. The prosecution closed its case on 3rd May, 2016 but the trial magistrate then was transferred before he could rule whether or not the applicants had a case to answer. Hon L. Ambasi CM took over the trial on 11th July, 2016 and fixed the matter for ruling on case to answer on 17th August, 2016. On 18th August, 2016, the Learned Magistrate delivered the ruling and placed the applicants on their defence.
3. Subsequently, the matter came up severally for mention and hearing but for reasons on record, it did not proceed. The dates include, 9/11/16, 1/3/17, 15/3/2017, 6/4/2017, 10/4/2017, 16/6/2017, 19/6/2017, 30/8/2017, 1/11/2017, 4/12/2017 and 17/1/18 when the matter did not proceed. The case against Dennis Karani was withdrawn on 16th June, 2017 after he died on 13th January, 2017.
4. On 17th January, 2018, the applicants lodged before this court an application under **sections 362, 364(1) (b) of the Criminal Procedure Code and Article 50 (1) (a) & (4) of the Constitution** seeking two substantive prayers. They sought an order that the court calls for the lower court record and review and expunge from record the ruling of the trial court made on 18th August, 2016 that had found that they had a case to answer. They also sought for an order that the matter do proceed before another court other than Hon. L. Ambasi CM who had placed them on their defence.
5. The grounds for the application were set out in body of the Motion and the supporting affidavit of Musa Nuru Kinoti sworn on 16th January, 2018. These were that; the impugned ruling was prejudicial to the applicants; that they had been placed on their defence vide a reasoned ruling thereby making their defence superfluous; that in the circumstances the ruling amounted to a final judgment. That in the circumstances, the matter should proceed before another magistrate other than Hon. L. Ambasi CM.
6. When the matter came up before me on 17th January, 2018, I called for the original record of the trial court in terms of **section 362 of the Criminal Procedure Code**. On 22nd January, 2018, directed that I did not require to hear the parties. **Section 362 of the CPC** provides:-

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the

purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

7. The complaint of the applicants is that the ruling of the trial court dated 18th August, 2016 was reasoned enough as it gave reasons why they had a case to answer. **Section 210 of the CPC** provides that:-

“210. If at the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as the prosecutor and the accused person or his advocate may wish to put forward, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.”

8. It is clear from the foregoing that all that is required after the prosecution has closed its case, is for the trial court to satisfy itself that a prima facie case has been established to warrant the accused to respond to. The section does not provide on the nature of the ruling. However, it must be understood that as at that point, the court cannot make any firm findings on the evidence tendered by the prosecution as it has not heard the accused. Making any inferences or conclusions might be prejudicial to the accused. It may be inferred that the court has already made up its mind, although that might not be the case.

9. In this regard, all that a trial court is expected to do is to state that from the evidence so far tendered, it is satisfied that the accused has a case to answer. The court then complies with the provisions of **section 211 of the CPC**.

10. In the present case, the trial court wrote a 5 page ruling and put the applicants on their defence. I have carefully considered the ruling. In its ruling, the court reviewed the entire evidence on record before concluding that the applicants had a case to answer. Although the court cannot be said to have made a reasoned ruling capable of being termed as such, there may be an apprehension that since the evidence of each prosecution witness was reviewed, the court may have made conclusions on that evidence.

11. At this juncture, I need point out that it may well be that the trial court has not made up its minds on the evidence on record and that it will still consider and give due regard to the defence of the accused. However, by having reviewed in detail the testimony of the prosecution and then make a finding that the accused have a case to answer, the misapprehension of the accused that the court may have made conclusions on the evidence on record may not be without foundation.

12. In this regard, I am satisfied that the court fell into error by rendering such a lengthy ruling before making a finding that a prima facie case had been established and that the accused had a case to answer. Further, I note that the court also failed to comply with the provisions of **section 200 (3) of the CPC**. That provision does not necessarily mean that the witnesses must be recalled. It only requires the court to inform the accused of their right under that section and if the witnesses can be found, they be recalled.

13. Accordingly, I allow the application. The ruling made on 18th August, 2016 is hereby set aside. The file is remitted back to the lower court to be handled by any other Magistrate other than Hon. L. Ambasi. The said court has to comply with **section 200 of the CPC** before ruling on whether there is a case to answer or not. It is so ordered.

DATED and **DELIVERED** at Meru this 8th day of February, 2018.

A. MABEYA

JUDGE