



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO.5 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

DANSON NGARUKA MUTURI.....ACCUSED

R U L I N G

By an information dated the 2nd February 2015, the accused person DANSON NGARUKA MUTURI was charged with murder contrary to S.203 as read with s. 204 of the Penal Code. It was alleged that on the night of 17th January 2015, he murdered DAVID NDONGA NGARUKA at Gathanji village, Kiaguthu sub location within Nyeri County.

Plea was taken on the 11th February 2015 and the accused pleaded not guilty.

On the 30th October 2018 the prosecution closed its case.

The record as reproduced here below speaks for itself.

The prosecution did not produce a single witness to testify against the accused person. The court was told from the bar severally that the witnesses were relatives of the accused person and would not testify. That they refused to receive summons. That they were served, appeared in court but disappeared before they could testify.

In any murder trial there are categories of witnesses.

There are the civilian witnesses.

These may include the local administration, the area chief or assistant chief.

There are the police officers- the report officer, the one who received the report, the arresting officer, the scenes of crime officer, the investigating officer.

Then there are the expert witnesses: the psychiatrist, the pathologist, the government analyst.

Not a single witness appeared.

Warrants of arrest were applied for against the witnesses but were declined because there was no evidence of service. Though s. 92 of the CPC does not require it, it would be neither fair nor just for the court to proceed to issue a punitive order in the form of a warrant of arrest for a witness on the strength of submissions from the bar. Not a single affidavit of service was produced by anyone to show that the witnesses had indeed been served to enable the court to take any further action.

The prosecution in a demonstration of utter helplessness, then closed its case.

There is no evidence to consider. Just the record below. I can only make a finding of Not Guilty under s. 306(1) of the CPC. That means the accused is to be set free unless otherwise legally held.

2.2.15

Before Hon. J. Aringo-DR

Kagure –Court Clerk

Accused-present

Court-matter fixed for plea on 11.2.15 before the Hon. Judge

Court-

The subject/accused presented to court. The arresting officer presents the suspect. The birth notification shows that he was born on 26/9/1996. He is definitely above the age of majority. The subject to be committed to remand prison till 11/2/15 when he will be presented to the judge for plea.

Mention 11/2/15.

J. ARINGO

DR

2.2.15

11.2.15

Coram Before Justice J.Ngaah

Court Clerk-Ndungu

Accused-present

Njue for the state

Kiminda for the accused

Njue-The matter is for plea. The accused is mentally fit to take plea. I am ready.

Kiminda- We can take the plea.

Court-

The court notes that there is a report dated 12/1/15 from a psychiatrist indicating that the accused person is mentally fit to stand trial.

Court-Which language would the accused person use?

Accused- Swahili language

Court- The charge/information and all the elements thereof are read to the accused person interpreted in Swahili language and when asked whether it is true or not he responds: -

Accused-Not true

Court-Plea of not guilty entered. Mention on 7/5/2015.

J. NGAAH

JUDGE

11.2.15

7.5.15

Coram Before Justice J. Ngaah

Court Clerk-Ndungu

Accused person –present

Ms. Maundu for the state

Kiminda for the accused

Court-is the accused person of age?

Mr. Kiminda-At the time of the offence the accused had just attained the age of majority.

Court-

The diaries are fully filled mention 10/6/15 before the Deputy Registrar.

J. NGAAH

JUDGE

7.5.15

10.6.15

Before Hon. Mutua (DR)

Court- Njenda

Accused-present

Further mention 10.7.15.

P. MUTUA

DR

10.7.15

Before Hon. Mutua (DR)

Court-Njenda

Accused-present

Further mention 11.8.15.

P. MUTUA

DR

11.8.15

Before Hon. Mutua (DR)

Court-Gititu

Accused-present

Further mention 11.9.15

P. MUTUA

DR

11.9.15

Before Hon. Aringo (DR)

Court- Gititu

Accused-present

Further mention 12.10.15

J. ARINGO

DR

11.9.15

12.10.15

Before Hon. Wekesa (DR)

Court- Muriu

Accused-present

Further mention 12.11.15

C.WEKESA

DR

12.10.15

12.11.15

Before Hon. Wekesa (DR)

Court-Muriu

Accused-present

Further mention 11.12.15

C.WEKESA

DR

12.11.15

11.12.15

Before Hon. Justice J. Mativo

Miss Jebet for the state

Mungai-Court clerk

Accused

Jebet for state

Accused present

Jebet –case is coming up for mention to take a hearing date.

Accused- I ask for bond. I have suffered in jail.

Court-

1. State to file an affidavit on the bail application.
2. Probation Officer to file a pre-bail report within 2 weeks from today.
3. Mention on 24.12.15
4. Mention on 20.1.16 for hearing and determination of the bail application.

J. MATIVO

JUDGE

24.12.15

Before Hon. J. Wambilyanga –SRM

Court clerk- Gititu

State counsel-

Court-Case mentioned. Further mention on 20.1.16.

DEPUTY REGISTRAR

29.12.15

Before Hon. C. Mburu-DR

Court clerk-Nyagah

State counsel-

Accused-present

Court-case mentioned. Further mention on 20/1/16.

C.MBURU

DR

20.1.16

Before Hon. Justice J. Mativo

Miss Jebet for the state

Mungai-Court clerk

Accused

Chebet-Coming up for a pre-bail report. I have not seen it but I rely on it.

Kiminda-

I urge the court to consider the report and the law on bail and determine.

Court-

I note that the pre-bail report raises fear about the safety of the accused. In view of the fears in the report, I hold the view that there are compelling reasons not to release the accused at this stage. Bail is therefore declined at this stage but may be considered later if the situation at home improves.

I direct that the case be listed for hearing on an early date. Hearing on or 3/3/16. Further mention on 3/2/16.

J. MATIVO

JUDGE

3.2.16

Before Hon.C.Wekesa-DR

CIP Wanjau

Court clerk –Muriu

Accused-present

Hearing on 3/3/16.

C.WEKESA

DR

3.3.16

3.3.16

Before Hon. Justice J. Mativo

Miss Jebet for the state

Mungai-Court clerk

Accused

Kiminda for accused

Chebet for state

Chebet- Not ready to proceed. The exhibits are still at the Government chemist. We are not ready to proceed without them.

Kiminda- No objection.

Court- Hearing on 10/6/16. Further mention 17/3/16 before Deputy Registrar.

J. MATIVO

JUDGE

17.3.16

Before Hon.Wekesa-DR

Court clerk-Muriu

Accused-present

Hearing 10.6.16. Further mention 18.4.16

C.WEKESA

DR

17.3.16

18.4.16

Before Hon.Wekesa-DR

Court clerk-Muriu

Accused-present

Hearing 10.6.16. Further mention 18.5.16

C.WEKESA

DR

18.4.16

18.5.16

Before Hon.Mutua-DR

Court clerk-Wangechi

State counsel-

Accused-present

Hearing on 10.6.16

P.MUTUA

DR

10.6.16

Before Hon.J.Ngaah-Judge

Court-Rahab

Accused-present

Chebet for the state

Ms.Mwangi for Kiminda for the accused

Chebet- I was not ready to proceed with it.

Ms.Mwangi- Mr.Kiminda was not ready to proceed.

Court-

The matter was scheduled to be heard before Justice Mativo. However, he is not sitting and in any event parties are not ready to proceed. The same is adjourned to 29/6/16 for hearing before court 3.

J.NGAAH

JUDGE

10.6.16

29.6.16

Before Hon.Justice J.Matavo

Miss Jebet for the state

Mungai –court clerk

Accused-present

Kiminda for Accused

Chebet for state

Chebet- Investigating officer informs me that the exhibits are not ready from the Government chemist. I ask for an adjournment.

Ndirangu- Accused was arrested in 2015- we need to give them a time frame.

Court-

a. The practice of Exhibits taking long at the Government chemist has become rampant and a serious hindrance to speedy disposal of cases. I will allow one more mention within 3 weeks to confirm the status of the exhibits and if they will not be ready, I will proceed and allocate a hearing date for the case. To me, this is a problem that should not be used to delay hearing of court cases.

Mention on 20.7.16.

J. MATIVO

JUDGE

20.7.16

Before Hon.Justice J.Matavo

Miss Jebet for the state

Mungai –court clerk

Accused-Absent – in custody

Mrs.Mwangi holding brief for Kiminda for accused

Chebet for DPP

Chebet- I have not received communication on the exhibits. We can take a hearing date.

Mwangi- We can take a hearing date.

Court-

a. Hearing to proceed on 7/11/16.

b. Formal mention before Deputy Registrar on 3/8/16. Production Order to issue for accused to be produced on the mention date.

J. MATIVO

JUDGE

3.8.16

Before Hon.Mutua-DR

Court clerk-Wangechi

State counsel-

Accused-present

Hearing on 7.11.16 –further mention 2.9.16.

P. MUTUA

DR

3.8.16

2.9.16

Before Hon.Kariuki –DR

Court clerk-Salome

Accused-present

Hearing 7.11.16 further mention 3.10.16

N. KARIUKI

DR

3.10.16

Before Hon.Kariuki –DR

Court clerk-Salome

Accused-present

Hearing 7.11.16. Accused remanded in custody.

N. KARIUKI

DR

3.10.16

7.11.16

Before Hon.Justice J.Matavo

Miss Jebet for the state

Mungai –court clerk

Accused-present

Kiminda for accused

Chebets for state

Chebets-

The witness I have is the father of the accused. He seems to be changing his story. He is denying his statement. I ask for time to have a pre-trial session with him.

Kiminda- If there are no witnesses the state should terminate the case.

Court-

I note that the prosecution seems to have challenges with its witnesses who are related to the accused and the deceased.

However, a decision has to be made either way since we cannot keep the case in abeyance and continue holding the accused who is in custody. I will grant limited time to the prosecution to either avail the witnesses or decide the cause of action. I will not adjourn this case again on the same reasons. I allow the adjournment for now and direct as follows: -

- a. Witness summons to issue upon David Ndonga and Moses Mwangi Gathaya

b. Hearing on 17/1/17

c. Mention before Deputy Registrar on 21/11/16.

J. MATIVO

JUDGE

17.11.16

Before Hon.Nelly Kariuki-DR

Court clerk-Salome

State counsel-no appearance

Accused-present

Hearing on 17.1.17. Further mention on 21.12.16 before the Deputy Registrar. Accused remanded in custody.

N. KARIUKI

DR

21.12.16

Before Hon.Nelly Kariuki-DR

Court clerk-Salome

State counsel-no appearance

Accused-absent

Hearing on 17.1.17.

N. KARIUKI

DR

17.1.17

Before Hon.J.Ngaah –Judge

Court clerk-Rahab

Accused-absent

No appearance for accused

Chebet for the state

Court-The accused had now been brought.

Court- The case shall be mentioned before court three (Justice Matheka) on 23/2/2017.

J. NGAAH

JUDGE

17.1.17

23.2.17

Before Hon.Lady Justice T.Matheka

Court clerk-Harriet

State counsel-Jebet

Accused-present

Mr.Kimani- I hold brief for Mr.Kiminda. He is before ELC Court. He requests file be placed aside.

T. MATHEKA

JUDGE

Court-file placed aside.

T. MATHEKA

JUDGE

23.2.17

Later

Coram as above

Accused-present

Kiminda for accused present

Kiminda-

We had a problem because the prosecution had indicated that witnesses had recanted their statements. The prosecution was to consult with Mr.Kaigai.

T.MATHEKA

JUDGE

Ms.Jebet-I pray for witness summons for :-

1. David Ndonga
2. Moses Mwangi Gathoka
3. Jared Muturi Ngaruka
4. John Maina Githitho

T.MATHEKA

JUDGE

Order-Witness summons to issue for these witnesses.

T.MATHEKA

JUDGE

The others are:-

1. Dr.Gachimi
2. Sgt.Mugo

3. PC Alex Wambua

4. C.I William Adenyo

5. Dr.R.Mwenda

T.MATHEKA

JUDGE

Court-Hearing on 26/4/2017 (4 witnesses) and 17/5/2017 (5 witnesses)

T. MATHEKA

JUDGE

23.2.17

26.4.17

Before Hon.Lady Justice T.Matheka

Court clerk-Harriet

State counsel-Jebet

Accused-present

Kiminda for accused

Ms.Jebet for the state:-

I am not ready to proceed. The Investigating Officer tells me that the exhibits are still at the government chemist. The exhibit was taken to the Government analyst.

T. MATHEKA

JUDGE

Court: -Questions

1. Can I see an exhibit memo to confirm that the exhibits were taken to the government analyst?

T.MATHEKA

JUDGE

Court prosecutor- We do not have the same here. I request for file to be placed aside.

T. MATHEKA

JUDGE

Mr.Kiminda- I request for 11:00am to come and proceed.

T. MATHEKA

JUDGE

Court- Hearing at 11:00am

T.MATHEKA

JUDGE

Later

Coram: As above

Court prosecutor-

The Investigating Officer has rushed to Othaya to get the exhibit memo. The Investigating officer also told me he went to bond the witnesses they refused to take the summons. I pray for warrant of arrest against the witnesses.

T.MATHEKA

JUDGE

Court- There is no proof that the witnesses were served. A Warrant of Arrest cannot just issue.

T.MATHEKA

JUDGE

Mr.Kiminda-

Witnesses have never attended. That was the reason why Justice Mativo gave limited time. Now that today there are no witnesses, I pray that prosecution have no evidence to tender against the accused person. That is why all this is happening. They should close their case.

T.MATHEKA

JUDGE

Ms.Jebet-

We still have a hearing date of 17/5/2017. We pray that this court to indulge us today and allow us to proceed on 17/5/2017

26.4.17

Before Hon.Lady Justice T. Matheka

Court Assistant-Harriet

State counsel- Chebet

Accused –present

Kiminda for accused

Ms.Jebet for the state-

I am not ready to proceed. The Investigating Officer tells me that the exhibits are still at the Government chemist. The exhibit was taken to the government analyst.

T.MATHEKA

JUDGE

Court-questions

1. Can is see an exhibit memo to confirm that the exhibits were taken to the government analyst?

T.MATHEKA

JUDGE

Court prosecutor- We do not have the same here- I request for file to be placed aside.

T.MATHEKA

JUDGE

Mr.Kiminda- I request for 11:00am to come and proceed.

T.MATHEKA

JUDGE

Court-Hearing at 11:00am

T.MATHEKA

JUDGE

Later

Coram: As Above

Court prosecutor-

The Investigating Officer has rushed to Othaya to get the exhibit memo. The Investigating Officer also told me he went to the witnesses refused to take the summons. I pray for warrant of arrest against the witnesses.

T.MATHEKA

JUDGE

Court- There is no proof that the witnesses were served. A warrant of arrest cannot just issue.

T.MATHEKA

JUDGE

Mr.Kiminda-

Witnesses have never attended. That was the reason why Justice Mativo gave limited time. Now that today there are no witnesses, I pray that prosecution have no evidence to tender against the accused person. That is why all this is happening. They should close their case.

T.MATHEKA

JUDGE

Ms.Jebet-

We still have a hearing date of 17/5/2017. We pray that this court to indulge us today and allow us to proceed on 17/5/2017.

Court-

With regard to the next hearing date, which is already on record, the prosecution are correct – so the matter will remain with the hearing date of 17/5/2017.

However with regard to today's submission about exhibits, the matter will be mention at 2:00pm for the same to be availed by the Investigating officer. The accused and counsel's presence will not be necessary.

T.MATHEKA

JUDGE

Later

Investigating Officer now present

Court prosecutor- I have the exhibit memo dated 18/01/2015.

T.MATHEKA

JUDGE

Court- Exhibit memo seen. Samples were taken on 18/8/16 and 19/8/2016.

T.MATHEKA

JUDGE

Order-

Summons Requiring Attendance to Government Analyst to appear on 17/5/2017 and explain why the report is not ready.

T.MATHEKA

JUDGE

26.4.17

Later

Further order- witness summons to issue to the four civilian witnesses who were to appear today for 17/5/2017.

T.MATHEKA

JUDGE

26.4.17

17.5.17

Before Hon. J. Ngaah –Judge

Court clerk-Rahab

Accused-present

Jebet for the state

Kiminda for the accused

Court- Hearing on 11.10.17 mention on 28/6/2017 before the Deputy Registrar.

J.NGAAH

JUDGE

17.5.17

28.6.17

Before Hon.N.Kariuki –DR

Court clerk-Salome

State counsel-No appearance

Accused-present

Further mention 28.7.17. Hearing on 11.10.17.

N.KARIUKI

DR

28.6.17

28.7.17

Before Hon.C.Mburu-DR

Court clerk-Salome

State counsel-Beatrice

Accused-present

Further mention on 28.8.17. hearing on 11.10.17

C.MBURU

DR

28.7.17

28.8.17

Before Hon.C.Mburu-DR

Court clerk-Salome

State counsel-Jebet

Accused-present

Further mention on 28.9.17. hearing on 31.10.17. Accused remanded in custody.

N.KARIUKI

DR

28.8.17

28.8.17

Before Hon.N.Kariuki-DR

Court clerk-Salome

State counsel-Jebet

Accused-present

Further mention on 28.9.17. hearing on 11.10.17. Original date to remain.

N.KARIUKI

DR

29.8.17

28.9.17

Before Hon.R.Kefa

Court Assistant-Salome

State counsel-

Accused-present

Hearing on 11.10.17

R.KEFA

DR

28.9.17

12.10.17

Before Hon. Lady Justice T.Matheka

State counsel-Jebet

Court Assistant-Harriet

Accused-present

Ms.Maina holding brief for Mr.Kiminda

File placed aside.

T.MATHEKA

JUDGE

Later – Kiminda for accused person

Matter was for 11.10.17.

T. MATHEKA

JUDGE

Hearing on 17/1/18 & 1/2/18 – order of witnesses as per order of 23/2/17. Summons requiring attendance to issue accordingly.

Mention 13/11/17. Remanded in custody.

T. MATHEKA

JUDGE

12.10.17

17.1.18

Before Hon.T.Matheka –Judge

State counsel-Mr.Gitonga

Court Assistant-Harriet

Accused-present

Kiminda for accused person present

Gitonga-

We are not ready. This file was taken to the DPP's office- my senior Mr.Kaigai had called for the file- the Investigating Officers are before the court. They have given me the same information. They had some predicaments with the witnesses. I need time to follow up with

Mr.Kaigai.

T.MATHEKA

JUDGE

Court to prosecution

Q-Do you have any indication as to when this file was called for?

A-No, I have just received this information. I will follow up with the office.

T.MATHEKA

JUDGE

Mr.Kiminda-

Although this matter has another date, I am opposed to the application. The issue of witnesses not being available was raised on 7/11/16 before Justice Mativo.

Your ladyship, when this issue was raised the state was given a limited time to decide on the way forward. When the next appeared in court on 17/1/2017 the state counsel madam Jebet sought for witness summons they were issued.

From then, we have appeared before your ladyship. For one reason or the other, the witnesses have never appeared. On 26/4/17 the court was told that witnesses had refused to take summons, and exhibits were said to be with government analyst. Mr. Gitonga is seeking an adjournment for same reasons. This matter must come to an end. We have always availed ourselves to proceed.

T.MATHEKA

JUDGE

Mr.Gitonga-

As rightly put by my senior, this matter was before Hon. Mativo J and my colleague prayed for witness summons- the record will show that I have never appeared in this matter. As my senior has stated that there was an issue with witnesses from the Investigating officer. I was not aware, I pray for court's indulgence, I do not know what could have transpired. I will confer with my senior. This is the 1st time I am appearing.

T.MATHEKA

JUDGE

Court-

These dates were taken in October 2017. The prosecution to avail an update on the file tomorrow 18/1/18.

T.MATHEKA

JUDGE

17.1.18

18.1.18

Before Hon.T.Matheka –Judge

State counsel-Mr.Muranga

Court Assistant-Harriet

Accused-present

Ms.Ndegwa for Kiminda for accused

Muranga-

We had a discussion with Mr.Kaigai. He requested that the DPP be given time to forward the file for directions. He needs 2 months. We found that the file had been misplaced.

T.MATHEKA

JUDGE

Ms.Ndegwa- The matter has hearing date -1/2/18. I am seeking for directions.

T.MATHEKA

JUDGE

Court-The matter will come to court on 1/2/18. Let the DPP Nyeri give the court the position of the matter.

T.MATHEKA

JUDGE

18.1.18

1.2.18

Before Hon.T.Matheka –Judge

State counsel-Mr.Muranga

Court Assistant-Harriet

Accused-present

Ms.Mwangi holding brief for Kiminda for accused.

It is for hearing. However, the last time we were in court, prosecution were to inform the court if they had directions from their in charge.

T.MATHEKA

JUDGE

Muranga-

I have looked at this matter. My humble review is that we shall be able to proceed with the witnesses who are available. However at a later stage we will be seeking orders to have some of the unwilling witnesses compelled to appear.

T.MATHEKA

JUDGE

Court- The state needs to respond to all the issues.

Muranga-I will follow up on the exhibits.

T.MATHEKA

JUDGE

Question-How many witnesses do you expect to call in total?

Murang'a - 7 witnesses the willing witnesses -4. The unwilling are three- I need witness summons for them.

T.MATHEKA

JUDGE

(4)

Hearing on 25/4/2018 (4witnesses) 7/6/18 (3witnesses)

Witness summons to issue to Doctor, the government analyst.

Mention 1/3/18 before DR

Mention on 15/5/18 for prosecution to seek any orders they may need with regard to alleged reluctant witnesses.

T.MATHEKA

JUDGE

1.3.18

Before Hon.Irene M-DR

Court Assistant-

State counsel-

Accused-

Hearing on 25.4.18, Mention 15.5.18, Hearing 7.6.18

Further mention 4.4.18 (DR)

I.MUTHEE

DR

1.3.18

4.4.18

Before Hon.Irene M-DR

Court Assistant-Salome

State counsel-

Accused-Present

Hearing on 25.4.18

I.MUTHEE

DR

4.4.18

18.4.18

Before Hon.Mumbua T.Matheka –Judge

Court Assistant-Atelu

State counsel-Njue

Ms.Mwangi holding brief for Kiminda for accused.

Hearing on 29/5/18 witness summons for Doctors and government analyst. On 7/6/18- (3 witnesses).

Mention 18/5/18 before DR.

T.MATHEKA

JUDGE

18.4.18

18.5.18

Before Hon.N.Kariuki-DR

State counsel-

Court Assistant-Mercy

Accused-present

Hearing 29.5.18

N. KARIUKI

DR

18.5.18

29.5.18

Before Hon.Mumbua T.Matheka –Judge

Court Assistant-Atelu

Interpretation-English/Kiswahili

State counsel-Magoma

Counsel for accused person- Ms.Mwangi holding for Kiminda

Accused person-present

Mr.Kiminda is ready

State counsel- The witness summons were not issued.

Court- The witness summons for government analyst are on record collected by Mr.Njue.

T.MATHEKA

JUDGE

Mr.Magoma-

I believe that the government analyst was served but he is not here. I also pray for witness summons for the civilian witnesses who are difficult to avail as they are close relatives to the accused.

T.MATHEKA

JUDGE

Mr.Magoma-

I am taking over the matter personally. I will ensure that there are witnesses on 7/6/18. I pray for witness summons for the civilian

witnesses – they come from Othaya:-

1. David Ndonga
2. Moses Mwangi Gathoka
3. Jared Muturi Ngaruka
4. John Maina Gatitu

T.MATHEKA

JUDGE

I also pray for witness summons for Dr.Gachemi, Sgt Mugo from Nyeri police station (why ?)

State counsel- (we can dispense with that)

Ms.Mwangi- They can be granted the last adjournment.

Court- Witness summons to issue for the witnesses for 7/6/18.

T.MATHEKA

JUDGE

29.5.18

Accused- I pray for bond.

T.MATHEKA

JUDGE

Ms.Mwangi- On 20/1/16 bond was denied by the court on the basis that witnesses are family members.

T.MATHEKA

JUDGE

7.6.18

Before Hon.Mumbua T.Matheka –Judge

Court Assistant-Atelu

Accused-present

State counsel- Magoma

Kiminda for accused

State counsel- I expect witnesses.

Hearing at 10:00am.

T.MATHEKA

JUDGE

Later

Coram as above

Accused present

Magoma for state

Kiminda for accused

Magoma- I had 2 witnesses. Jared Muturi is father to accused. Moses Mwangi is father to accused. Both are brothers to deceased person. They have vehemently refused to come and testify. They were present in court. They then disappeared. I pray for summons for these 2 crucial witnesses to compel their attendance. I pray for adjournment.

T.MATHEKA

JUDGE

Summons were issued for four witnesses- the other 2 have not been accounted for.

T.MATHEKA

JUDGE

Court prosecutor-

The other 2 were not found at home. I pray for warrant of arrest for the 2 witnesses who were present in court. I pray for warrant of arrest.

T.MATHEKA

JUDGE

Court- Where is the evidence that they were served?

T.MATHEKA

JUDGE

State counsel-

They were served. That is why they came today. They would not have known the matter was for hearing today if they had not been served.

T.MATHEKA

JUDGE

Court-

The prosecutor is not serious. The witnesses are relatives of the accused. They could have learnt of the hearing date from the accused. Prosecution needs to provide court with proof of service/Return of service/affidavit but cannot say from the Bar that witnesses were served and expect warrant of arrest to issue.

T.MATHEKA

JUDGE

Kiminda-

We are opposed to the application for any application for adjournment. Plea was taken on 11/2/15. I can confirm that we have come to court on not less than 10 occasions for hearing. Not a single witness has ever come to court to testify.

On 17/11/16 the state had indicated to the court that they were having challenges with witnesses who had recanted their evidence – Judge gave them limited time to avail witnesses/decide way forward.

On 23.2.17 witness summons were applied for and issued for all these witnesses. We have appeared severally – state has even sought to seek directions on the way forward from head office.

On 29/5/18 we were before you. Matter had 2 hearing dates. It was adjourned to today. No single witness in court. Some witnesses are still being said not to be cooperative. 3 years down the line, witnesses not available not ready, accused is entitled to his right to expeditious

disposal of the matter.

Application for adjournment be refused. State has had sufficient time.

T.MATHEKA

JUDGE

Mr.Magoma-

It is very clear that we had witnesses today. They were served they are not in court. Because of their mutual relationship with deceased. No witnesses disappeared, we pray for another hearing date for witness summons be served afresh. If they fail not to come action be taken against them.

T.MATHEKA

JUDGE

Court-

This case- the prosecution is not serious. Not a single witness has appeared since 2015. The file is full of witness summons and no evidence of service on any of them. The prosecution will have a LAST ADJOURNMENT to avail all its remaining witnesses during the next hearing dates. Should they have challenges- since the date is far off, they are at liberty to have the file brought up before me before the hearing date for any other directions.

T.MATHEKA

JUDGE

Court prosecutor- I will be calling 6 witnesses.

-4 civilians

-1 police officer

-2 doctors

-we are not calling the government analyst.

T.MATHEKA

JUDGE

Hearing on 31/10/2018 (3)

1/11/2018 (4)

Court prosecutor- I need witness summons for:-

Jared Muturi Ngaruka

Moses Mwangi Gathoga

David Waweru

John Maina Gathitu

Gr.Gachimi

Dr.Mwende

T.MATHEKA

JUDGE

7.6.18

Mention before the Deputy Registrar on the 6/7/18.

T.MATHEKA

JUDGE

6.7.2018

Before Hon.N.Kariuki –DR

Court assistant-Mercy

State counsel-Kitoto

Accused-present

Further mention 6.8.18. Hearing on 31.10.18 and 1.11.18

N.KARIUKI

DR

6.7.18

6.8.18

Before Hon.R.Kefa –DR

Court assistant-Makena

State counsel-

Accused-present

Further mention 5.9.18. Hearing on 31.10.18 and 1.11.18

R.KEFA

DR

6.8.18

5.9.18

Before Hon.N.Kariuki –DR

Court assistant-Mercy

State counsel-absent

Accused-present

Further mention 5.10.18. Hearing on 31.10.18 and 1.11.18

N.KARIUKI

DR

5.9.18

5.10.18

Before Hon.R.Kefa –DR

Court assistant-Makena

State counsel-

Accused-present

Hearing on 31.10.18 and 1.11.18

R.KEFA

DR

5.10.18

30.10.18

Before Hon.Mumbua T.Matheka –Judge

Court Assistant-Atelu

Kiminda for accused

Accused present

Magoma for state

Magoma- I request file be placed aside to 11:00am.

T.MATHEKA

JUDGE

Later

Coram As Above

Accused-present

Kiminda for accused

Magoma-

It was called for in the morning. I requested that file be placed aside. We have challenges – we took date on 7/6/18. The Investigating officer Mr.Alex Wambua was present. I applied for summons for witnesses- whom I said were relatives of accused. I called Alex on Monday last week. He told me that he has served witness summons and they were willing to come. I rang him this morning. The phone was going through but he was not picking my phone. He has sent another officer with the file. The date he was indicated on the file is different from the date we took in court – i.e. 26/10/18 – yet he was present when we took the date. I rang him on 22/10/18 and he said he knew matter was for today and witnesses had been bonded.

I am not pre-empting what transpired. I believe that matter had last adjournment. Alex personally took those summons. I can confirm that there are no witness summons on the police file.

I do feel on my part this is frustration from part of the police. Matter was given last adjournment. I leave it to the court.

T.MATHEKA

JUDGE

Mr.Kiminda-

We oppose any application for adjournment. The issue for challenge of witnesses arose in November 2016. The Judge gave the state time to consider what would be done on regards these witnesses.

On several occasions not a single witness has even attended court- only the investigating officer attends. On 7/6/18 this court was constrained to indicate that no more adjournment would be granted. The state itself is admitting it has challenges.

Accused has been in remand since 18/1/15. The bond was declined for the reason that witnesses were related to accused person. For the last 3 years, state has said it has challenges, adjournment be refused and the accused should be set free.

T.MATHEKA

JUDGE

Magoma- I close my case.

T.MATHEKA

JUDGE

Ruling on 22/11/18.

T.MATHEKA

JUDGE

RULING DELIVERED, DATED AND SIGNED AT NYERI IN OPEN COURT THIS 22ND NOVEMBER 2018.

MUMBUA T. MATHEKA

JUDGE

In the presence of:-

Court Assistant-Kinyua

Magoma for state

Accused person

Ms.Mwangi holding brief for Mr.Kiminda

T.MATHEKA

JUDGE