



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI
CRIMINAL CASE NO. 57 OF 2016

REPUBLICPROSECUTOR

V E R S U S

FREDRICK OLE LELIMAN.....1ST ACCUSED

STEPHEN CHEBURET MOROGO.....2ND ACCUSED

SILVIA WANJIKU WANJOHI.....3RD ACCUSED

LEONARD MAINA MWANGI.....4TH ACCUSED

PETER NGUGI KAMAU.....5TH ACCUSED

DIRECTIONS

1. On the 9th February 2017, a Pre-Scheduled Pre-Trial Conference was held in this case. Present during the Conference were Learned Prosecution Counsels led by Mr. Mutuku, Learned defence counsels, Mr. Cliff Ombetta for the 1st to 3rd accused, Mr. Mochere for the 4th accused and Mrs. Nellias Kinyori for the 5th accused; Learned Counsels for Interested parties, Prof. Sihanya and Mr. Ongaro for the LSK and Mr. Fred Ojiambo and Mr. Ahmed Jele for the families of the victims.

2. I first informed the parties of a letter addressed to Hon. Lady Justice Ruth Sitati by the Hon. Principal Judge of the High Court, and copied to me. It was dated 25th January 2017. In that letter, the Principal Judge was replying to Lady Justice Sitati's letter to him. In short the Hon. Principal Judge

And by a copy of the letter directed me to take up this trial from Lady Justice Sitati.

3. I therefore invoked section 201(1) and section 200 of the Criminal Procedure Code and gave the Counsels present an opportunity to express themselves on whether any of them would be objecting to this court taking over the matter. All counsels stated that they had no objection to me taking up the matter.

4. I then asked the counsels how they would want the case to proceed, whether by starting denovo or continuing with it from where Sitati, J had heard two witnesses. I informed the parties that they also had the right to ask to re-call any or both of the witnesses who testified before the previous judge for further cross-examination. It was an unanimous decision by all that we continue with the case from where Sitati, J left off.

5. I am fully aware that the accused persons in this case have a right to express their opinion on the

question of recalling previous witnesses afresh or for further cross-exam and they are informed they are free to do so.

6. After that session of the directions on the presiding judge of the case I informed the Learned Counsel of the request expressed by the Hon. Principal Judge to have this case heard through audio capturing of the proceedings through electronic gadgets after which the proceedings so captured would be transcribed.

7. Some of the Learned Counsels had attended the preparations of setting up the electronic gadgets for dubbing of the proceedings organized by the Ag. Director of ICJ, Judiciary Mr. Ikileng and the Deputy Registrar of the Criminal Division Hon. Aganyo among other technical staff and Court Assistants.

8. All expressed doubt in allowing the proceedings to be recorded with the provided gadgets and expressed the serious weaknesses that would be-devil the court if such a process were adopted. In summary it was concluded that electronic dubbing of the proceedings in cases.

(a) Does not have any statutory underpinning under the Criminal Procedure Code or other written law. Even if Section 391 of Criminal Procedure Code were squeezed to be adopted to the system of recording provided to this court due to lack of a legal framework required the whole process may turn out to be an academic exercise.

(b) The system set up in court has a software which is corrupted meaning it cannot have a direct linkage with either the server or the video coverage. As a result of that there will be manual transfer of voices recorded in court to a laptop and from the laptop it will be transferred to a manual hand drive which will be transferred to a server. Due to all these human interventions and manual transfers following challenges present themselves:

(i) The laptop can be corrupted by virus and that may wipe out proceedings.

(ii) The materials can be open to manipulation.

(iii) The person carrying the laptop may be kidnapped.

(c) The recorded audio proceedings will have to be transcribed. The challenge will be the process of confirming the accuracy of the proceedings by the court together with the members of the bar and the bench forming the court coram. As a consequence, the efficiency of the entire recording process will be affected.

(d) The system of recording, transferring and transcribing the proceedings is not efficient and will at the end of the day be a handicap to the bench itself.

(e) Due to the sensitivity of the matter, the great public interest and interest of the accused persons, it is not advisable to adopt technology that has not been tested before in similar proceedings and for which no reference in terms of experience and best practices can be found.

Consequently the court appreciates apprehension of the parties in adopting the use of the technology provided to record these proceedings.

It is therefore adopted and court so orders that these proceedings be recorded by long hand as by law provided.

DATED AT NAIROBI THIS 14TH DAY OF FEBRUARY, 2017.

LESIIT, J

JUDGE