

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CRIMINAL REVISION NO. 12 OF 2015

(Original Criminal Case No. 945 of 2012 of the Chief Magistrate's Court at Naivasha)

REPUBLIC.....PROSECUTOR

-VERSUS-

GEOFFREY NJATHI NDUNGU.....ACCUSED

RULING ON REVISION

1. This matter was placed before me based on a request by the Director of Public Prosecutions dated 23rd February, 2015. The subject matter of the request is the lower court's order of 26th January, 2015 denying an adjournment to the prosecution and forcing closure of the prosecution case.
2. This court has been requested to intervene under Section 364 of the Criminal Procedure Code. Having perused the proceedings of the trial in the lower court, I am disinclined to intervene in this matter for the following reasons:
 - i. The Criminal Case commenced in 2012 and has dragged on for various reasons attributable to both the prosecution and the defence.
 - ii. The record shows that the investigating officer did not attend court on 29/4/2014, 23/6/2014, 19/8/2014, 23/10/2014 and lastly on 26th January, 2015 when the impugned order was made by the lower court.
3. In the initial instances no explanation was given for the absence. Other varied reasons subsequently given for the absence appear trifled and unsatisfactory. The trial court was entitled to reject the prosecution application for adjournment on 26/1/2015, having granted them what was declared as a last adjournment on 19/8/2014.
4. The DCIO's letter dated 11/2/2015 and affidavit by the investigating officer sworn on the same date do not explain the latter's persistent absence from the trial. Justice delayed is justice denied. The prosecution was sufficiently accommodated to present all its witnesses within the period of close to three (3) years that the case has been pending in court. The request for revision is therefore rejected.

Delivered and signed at Naivasha this 4th day of March, 2015

C. W. MEOLI

JUDGE