



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 76 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERUS**

**JAMES KAHIGA KARURI.....ACCUSED**

**RULING**

This is a ruling to determine whether this court should allow the prosecution any further adjournment to call the remaining witnesses before closing their case. The charge facing the accused is murder contrary to section 203 read with section 204 of the Penal Code. It is alleged that James Kahiga Karuri, the accused, murdered Peris Nyokabi Gaitho on 9<sup>th</sup> September 2012 at Gitiha Village in Githunguri District within Kiambu County.

Hearing of this case commenced before me on 17<sup>th</sup> November 2014 when four witnesses testified for the prosecution. An adjournment was granted to 4<sup>th</sup> December 2014 following the application by the prosecution. Hearing did not take place on that day as anticipated due to lack of witnesses. Hearing was adjourned to 9<sup>th</sup> and 10<sup>th</sup> February 2015. Three witnesses testified during the two days after which the matter was adjourned to 25<sup>th</sup> March 2015 at the instance of the prosecution. Court was told that the Government Analyst and the Pathologist were not available. In all the days the prosecution sought adjournments the defence through Mr. Kihang'a did not raise an objection. However, on 25<sup>th</sup> March 2015 counsel asked the court to mark the adjournment as the last one for the prosecution. This was not granted but when court resumed on 14<sup>th</sup> April 2015 there were no witnesses. Court was informed that the doctor's schedule was rather busy and he is not able to find time to attend court. The prosecution seemed to have issues with the Government Analyst who was said to have retired and therefore unavailable. The defence objected to the adjournment and urged the court to mark it as the last adjournment for the prosecution.

On the part of the court, my view was that the prosecution was not doing all that was within their power to ensure the witnesses were bonded to attend court. The adjournment was allowed to 5<sup>th</sup> May 2015 with a caution that the court would take steps to ensure the hearing of this case comes to a conclusion.

Yesterday, 5<sup>th</sup> May 2015, the two witnesses were not in court and the prosecution counsel told the court that efforts to have the doctor and the Government Analyst summoned were unsuccessful because the doctor was in Naivasha attending some training while the Analyst had retired. The prosecution counsel sought more time to identify another Analyst to produce the report.

This court appreciates the challenges facing the prosecution in terms of availing witnesses in court. When it comes to expert witnesses the challenges become more acute. This need not be the case. Where an expert witness becomes totally unavailable and in the name of expeditious conclusion of a case, it is possible and perfectly legal to seek another officer that expert has worked with to produce the document/report.

Since this matter commenced hearing before me, we have had no major challenges in terms of availing witnesses to court. The defence has been gracious enough not to oppose applications for adjournments until it became unbearable for them.

I have given this matter serious thought. I have agonized between denying the prosecution further

adjournment and allowing them more time. I have taken into account that justice must be availed to both the accused and the victim or his/her family. I am alive to the legal provisions for expeditious disposal of case. I am also alive to my order of 14<sup>th</sup> April 2015. I have seen the bond to attend court served on Dr. Johansen Oduor and his comments that he was unable to attend court. I have taken into account that the Analyst who prepared the report in this case has retired. These two witnesses are the only ones remaining.

While I feel that the prosecution ought to have taken urgent steps towards having another person, doctor and analyst, produce the reports on behalf of the witnesses who have caused delay in this case, I will review my earlier orders and allow the prosecution one week to make arrangements to have the two reports produced in evidence. I have been persuaded to do this after taking into account that justice must not only be done but be seen to have been done. The family of the victim expects justice from this court just like the accused person. Let all the evidence be tendered before this court can determine whether the accused is guilty or not. It is upon the prosecution to ensure they do not squander this chance availed to them.

I urge the defence to bear with the court in the name of justice as I vary my earlier order and allow a further adjournment for one more week. Let us agree on a convenient date for further hearing. I make orders accordingly.

**Dated, signed and delivered this 6<sup>th</sup> day of May 2015.**

**S.N.MUTUKU**

**JUDGE**