

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 15 OF 2011

REPUBLICPROSECUTOR

VERSUS

JOHN GACHATHI GITAU.....ACCUSED

RULING

This is a ruling to determine whether this court should allow the prosecution a further adjournment. During the hearing of this case on 6th October 2015 prosecution counsel asked the court to allow her an adjournment. She submitted that she was facing challenges in securing witnesses to attend court. She said that the Investigating Officer was not able to secure a death certificate in respect of Erick Itibi Ndichu who is alleged to have died on 1st July 2015 before he testified. Counsel informed the court that the prosecution was not able to acquire the death certificate because the same was still being processed. She sought to be allowed at least one month to follow up on the document and produce the same in court.

The application was opposed by the defence citing the time that this matter has taken before determination. Defence counsel informed the court that the prosecution had been granted the final adjournment and the court ought not to decline any further application for adjournment.

To put this matter into perspective, it is necessary to go back and mention what has transpired so far. In the course of this trial and after several adjournments at the instance of the prosecution, the prosecution counsel informed the court that one Eric Itibi Ndichu, a prosecution witness, had died before giving his evidence. Counsel sought to have the Investigating Officer produce the deceased witness's statement. This court gave directions through its ruling delivered on 13th July 2015 that it was crucial to provide proof of death of the witness. The relevant part of that ruling reads as follows:

“I will and do hereby decline to allow the investigating officer to produce the statement of Michael Mbugua. He is however allowed to produce the statement of the deceased witness but he must table evidence as proof of his death. In the absence of a death certificate this court requires evidence to show that the witness died and perhaps the death certificate has not been issued. I wish also to state that the prosecution counsel did not produce the burial permit although she mentioned that she had it”.

After that ruling was delivered the case was fixed for hearing on 5th and 6th October 2015. This court was categorical that the adjournment would be final for the prosecution on the issue of lack of witnesses. It has been almost close to three months since that order was issued. On 5th October 2015 there were no witnesses and the matter was adjourned to 6th October 2015 since both dates had been taken for hearing. On 6th October 2015 after the testimony of Dr. Oduor Johansen on behalf of Dr. Ngulungu the prosecution applied for an adjournment giving reasons that the Investigating Officer had not managed to get the death certificate in respect of Erick Itibi Ndichu and that she required at least one more month to follow up on the matter.

Without going into too many details, the ruling was clear that a death certificate or any other proof of death was adequate for this court to allow the Investigating Officer to produce the statement of the deceased witness. I find no justification for this court to alter or review its earlier ruling allowing final adjournment. There is no evidence that any efforts were made to follow up on this matter. An affidavit either from an Officer from the relevant Government Department dealing with registration of births and

deaths in addition to the burial permit would have sufficed. Yet no one thought of pursuing this matter even when the ruling of the court is clear on the matter and the time it has taken until the hearing date.

Trials must come to an end. This court has bent backwards in favour of the prosecution in granting adjournments for lack of witnesses. It is time to put a stop to this. This court declines to allow any further adjournment on this matter with the consequence that the application by the prosecution for a further adjournment is hereby disallowed. Orders are made accordingly.

Dated, signed and delivered in open court this 7th day of October 2015.

S. N. MUTUKU

JUDGE