



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
MISC APPLICATION NO. 13 OF 2015

SILAS MUTANDA ONYANGO----- APPLICANT

VERSUS

REPUBLIC ----- RESPONDENT

RULING

1. Under my Supervisory Jurisdiction over Subordinate Courts, I have called for and read the record of proceeding in Busia SOA No. 112/2014 Republic Vs Silas Mutanda Onyango. I did so at the prompting of the Applicant who complained that the Trial Court was granting too many adjournments and that was prejudicing him.
2. What does the record disclose? Plea was taken on 24th October 2014 and the matter fixed for hearing on 17th December 2014. On that day, due to lack of witnesses the Prosecution sought for an adjournment. The Accused never objected and it was granted. The matter was rescheduled to 19th January 2015.
3. On 19th January 2015, the Prosecution was ready with two witnesses but the Defence sought an adjournment as the Accused informed Court that he had not been furnished with witness statements. Adjournment was granted to 23.2.2015.
4. On 23rd February 2015, the Prosecution was granted another adjournment for lack of witnesses. Adjournment was granted to 30th March 2015. On that day the Prosecution told Court as follows:-

“In this matter, the Accused and his family are interfering with the witnesses. It has become very difficult to trace and bond the Complainant. We are applying for an adjournment to trace and bond complainant. I otherwise have 1 witness.”

To which the Accused responded:-

“ I have no powers over complainant as I am in custody. She may be given last time ”

With this concession by the Accused the matter was adjourned to 13th May 2015.

5. On 13th May 2015, the matter proceeded to hearing of one witness and rescheduled to 6th July 2015. On 6th July 2015, the Prosecution once again, did not have witnesses and the Defence complained of lack of witness statements. The matter was rescheduled to 22nd July 2015.
6. For some reasons, not explained on the record, the Accused was not produced on 22nd July 2015. And so on the next day, 23rd July 2015 he was produced before court and a new hearing date of 15th September 2015 given. On 15th September 2015, the Prosecutor in conduct of the matter was away and this forced the State to seek an adjournment which was granted.

7. The hearing of this matter is now due for 11th November 2015.
8. The Complaint by the Applicant that there have been many adjournments on this matter is not idle. The Record reveals at least 5(five) Applications for adjournment have been made by the State. 3(three) of these were because of lack of witnesses. It may be true, as explained by the Prosecutor on 30th March 2015, that the State is having a difficulty tracing and bonding witnesses.
9. That said, the Accused person faces a serious charge of Defilement and it would be in the interest of Justice that, in as much as is possible, his criminal liability or otherwise be resolved on merit. It is only for this reason that I am inclined to give the Trial Court an opportunity to proceed with the matter on 11th November 2015 as proposed. The Trial Magistrate in conducting the matter, will certainly keep in mind the history of adjournments. The Applicant is at liberty to move this Court again if dissatisfied in the further conduct of this matter.

Those are my order.

F. TUIYOTT

J U D G E

5TH OCTOBER 2015