

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

Criminal Revision 202 of 2009

REPUBLIC.....APPLICANT

VERSUS

KAJOLE ANGORE.....ACCUSED

R U L I N G

This file has been placed before me by the Chief Magistrate Malindi on the strength of a letter by her dated 23rd October 2009.

The accused in this case before the law court **Criminal case 2051 of 2005 R V Kajore Angore** was charged with the offence of creating a disturbance contrary to section 95 (1) (b) of the Penal Code.

Seven prosecution witnesses testified and accused was put to his defence. He absconded from 15-6-06 to 12-3-09. He was brought to court under arrest and on 6/4/09 a substituted charge sheet was introduced and read out to the accused and he pleaded not guilty. Before proceeding with the matter, on 21/1/09, the court explained to accused his rights under section 200 (3) Criminal Procedure Code and accused was mute.

However the court suspected he might be mentally challenged and ordered for a psychiatrist's report but the same confirmed that he was fit to plead. Again on 23/10/09, the Trial Magistrate explained to him his trial rights under section 200 (3) Criminal Procedure Code and his reply was that he wanted the case to proceed from where it had reached.

The substitution of the charge sheet was done after the close of prosecution case. Section 214 of the Criminal Procedure Code provides;-

(1) Where at any stage of a trial before the close of the case from the prosecution, it appears to the court, that the charge is defective either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge as the court finds necessary to meet the circumstances of the case;-

The situation, substituting here is that prosecution had already closed its case – which does not fit in with what is envisaged by section 214 Criminal Procedure Code. I think that provision clearly focused on amendment before close of prosecution case to avoid creating opportunities for prosecution to patch up its case so that the evidence fits with the charge, to the prejudice of the accused. To have allowed prosecution to amend the charge after the close of the case, went against the grain of section 214 CPC and accused was prejudiced.

The court cannot therefore proceed with the case under provisions of section 200(3) Criminal Procedure Code. To that extent I revise the orders made allowing for the substitution of the charge and direct that the case do proceed to defence hearing based on the charge sheet that had been relied on at the close of prosecution case.

Dated this 2nd day of November 2009 at Malindi.

H A OMONDI

JUDGE