

IN THE HIGH COURT OF TANZANIA

AT SONGEA

(ORIGINAL JURISDICTION)

(SONGEA REGISTRY)

CRIMINAL SESSIONS CASE NO. 01 OF 2008

THE REPUBLIC

VERSUS

DEOGRATIAS S/O MLOWE

COURT'S RULING:

I have considered the prayer for further adjournment.

The case was fixed today for continuation of hearing of prosecution's witnesses. This is a very old case, it came before this court for first time in 2008. It's has been in court for more than ten years. The accused person was incarcerated in 2006. Hence, he has been in prisons since 2006.

The case was fixed for hearing in this session after having been brought back from the Court of Appeal following an order for re – trial. It was scheduled to be heard on 15/10/2019 – 23/10/2019. The prosecution did

not bring the witnesses as planned in the cause list. The last witness was brought. On 23/10/2019; they prayed for adjournment so they could bring the remaining witnesses. The case was adjourned to 13/11/2019; this is a period of almost one month. There is no explanation given as to the whereabouts of the witnesses, except for Mashine and Furaha. However even though, they indicated that Mashine and Furaha are at Mwanza and Njombe, yet their whereabouts are not known. The cause list was supplied to the parties almost two weeks before the commencement of this session; yet again I had given the prosecution more than a month.

There is no indication either from the summons which were issued nor from the affidavit which has been filed by the process server that there's likely hood that the witnesses will be found.

It is the duty of the court to control the proceedings before it, section 264 of the Criminal Procedure Act, Cap. 20 R.E. 2002 gives powers to the court to regulate its own practice in the exercise of its Criminal Jurisdiction. Similarly the Court of Appeal in the case of **Abdallah Kondo V. Republic**, Criminal Appeal No. 322 of 2015 sets guidelines where the court finds itself not able to tolerate the prayers for adjournment. The court gave the recourses which may

be taken before the subordinate court and the High Court as for the High Court, the court may invoke its inherent powers of the court and discharge the accused. The court went further and re – affirmed and adopted the principles laid down by late Hon. Mzava, J (as then was) in **R. V. Deeman Chrispin and others** [1980] TLR 116; where it was held thus:

1. A court was to have within reason, the power to control and regulated its own proceedings in order to prevent itself from being emasculated or rendered impotent.

2. If a court refused adjournment and the prosecution is unable to proceed, a court does not have to rescind its order. It is clothed with inherent power and so, in such cases of emergency, it can dismiss the charge and discharge the accused. But except in the most exceptional circumstances, an order of acquittal is unnecessary and unsuitable for that purpose."

Guided by this decision, it is my great conviction that the circumstances of this case is very exceptional for reason being that is very old case, it has been in court for

more than ten years and secondly, there is no evidence that there is likely hood of finding the witnesses whom the prosecution had intended to summon.

That being said, I reject the prayer for adjournment. I dismiss the charge and acquit the accused person accordingly. He should be let free.

Right of Appeal Explained.




S.C. MOSHI
JUDGE
13/11/2019