

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC
VS
MOHAMED DAHIR

Criminal Side No. 51 of 2009

Mr. Govinden, the Attorney General, for the Republic

Mr. Juliette for the Accused

RULING

Gaswaga, J

[1] Defence counsel is making an application to withdraw his appearance at this late hour, to be precise the last day of the trial citing a breach of the procedure adopted with regard to the parties being asked to file written skeleton arguments. The application is couched in the following style:

“My Lord I move to withdraw from this case..... The Criminal Procedure Code does not provide for written submissions. This is a serious breach of procedure, it will occasion a miscarriage of justice.... Unless a mistrial is ordered, I shall have to withdraw from representing the accused....”

[2] At the end of the day this is a public hearing where everything has to be done in the open. Trial by ambush has no place in this jurisdiction. That is why the

counsel were ordered to file and also exchange the skeleton arguments before the date for the final oral arguments. This is also the reason why, as submitted by Mr. Julliete, the court staff had to go an extra mile and remind the counsel to file the submissions well in time. Now, if the prosecution did not file the arguments well in time then it is another matter that has to be looked into.

[3] It is imperative for this court to first revisit the record and see what happened.

The proceedings of Monday 31st May, 2010 are worthy quoting:

“Mr. Govinden: My Lord the case is coming up for submissions on the 14th of June so if the case may be adjourned till then.”

Court: Yes and we had also agreed that both parties would be filing a skeleton of your arguments before the 14th then you can beef it up orally in court.

Mr. Juliette: Yes my Lord we will be filing a skeleton of our submission then we will present it orally.”

[4] I am aware that Section 186(3) of the Criminal Procedure Code, Cap 54 does not talk of written submissions or skeleton arguments but addresses by counsel. The Court of Appeal Rules specifically provides for written submissions or skeleton arguments. In the interest of justice I would say that this procedural factor is not prejudicial to any party, on the contrary it is beneficial to all concerned as parties are given chance to put their case chronologically and concisely before Court. Counsel cannot turn around and challenge the procedure the procedure at this time. He is stopped. He has even complied and filed arguments. No prejudice has been occasioned to his clients at all.

[5] The record also reveals that the prosecuting counsel, who is also the Attorney General informed court as well as defence counsel that he was travelling out of jurisdiction on official matters whereupon the dates for submissions were extended. He is also on record for having asked and been granted more time to file his submissions. Even at the last sitting of the court (7th July, 2010) when both counsel were present and ready to proceed with the addresses, but the session aborted due to lack of interpreter, the situation was as is today but defence counsel did not make any objections to anything nor apply to withdraw.

[6] On this matter the Attorney General objects to the application and submits that it is a delaying tactic on the side of the defence. Further, that the motion is totally frivolous and vexatious and an attempt to defeat the course of justice. It should be dismissed.

[7] It will be recalled that this is the very first piracy case we are trying in this jurisdiction. The accused are Somali nationals who have been in detention since December, 2009. All the evidence is in. Mr. Juliette represents them on legal aid certificate.

[8] Looking at the application once again, it is couched in such a way that the court is left with no option but to comply with what the Defence Counsel wants. This in my view tantamounts to holding the court at ransom, which I cannot allow. Its simply unacceptable. If counsel strongly believes that the procedure adopted is flawed, he should have appealed against it. Even other aspects complained of could have been ironed out or canvassed in counsel's address. Opting for such drastic and disastrous action is uncalled for. Any legal mind

would definitely know that granting such an application would mean a fresh trial yet some of the witnesses are always at sea while others are foreigners leaving in Europe. The scarce resources that we have should be properly allocated only to deserving and just causes. Certainly this is not one of them.

[9] In the present case, I see no error at all in this trial or procedures adopted. Therefore, I find no merit in the application and dismiss it. Leave for defence counsel to withdraw is hereby denied.

D. GASWAGA

JUDGE

Dated this 9th day of July, 2010.