

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL CASE NO. E044 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL OKEYO OKECH.....ACCUSED

RULING

1. This is a case that is stranger than fiction. Samuel Okeyo Okech was charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code. This was in Homa Bay High Court Criminal case No. 30 of 2018.

2. The particulars of the offence were that on the 22nd day of August, 2018, at Kanyaluo South location, in Homa Bay Sub County of Homa Bay County, murdered Reuben Omollo Opole.

3. The accused was brought to court on the 23rd August, 2018. The plea was taken on 18th September, 2018 and the hearing fixed for 4th December, 2018.

4. This case was adjourned severally mainly because the prosecution did not have any witness. On 6th October, 2021 the prosecution called two witnesses and applied for an adjournment. The accused was in custody since 2018. The prosecution were granted a last adjournment.

5. On 25th October, 2021 no witness was availed on grounds that the four remaining witnesses were attending to a patient. When the application for adjournment was declined, the matter was withdrawn under section 5 (1) (b) (iii) of the ODPP Act.

6. The accused was rearrested immediately and charged afresh in Homa Bay High Court Criminal case number E044 of 2021 on 26th October, 2021. The plea was taken on 4th November, 2021 and the hearing scheduled for 14th March, 2022. On the scheduled day the drama of adjournments began again. The defence protested and I was given the background of the case. I declined to allow the adjournment and the prosecution terminated the proceedings under section 5 (1) (b) (iii) of the ODPP Act. I allowed the termination and reserved the ruling.

7. Article 50 (2) (e) of the Constitution provides:

Every accused person has the right to a fair trial, which includes the right—

(e) to have the trial begin and conclude without unreasonable delay;

8. The accused has been waiting for his case to be concluded for 3 years and 8 eight months. In this period only two witnesses were availed. The prosecution at all times gave flimsy excuses. The accused was in custody.

9. This court is alive to the fact that the interest of both the prosecution and that of the accused must be balanced to ensure that there is no miscarriage of justice. Similar conduct made the Court of Appeal in the case of **Stanley Munga Githunguri v Republic [1986] eKLR** to state as follows:

These proceedings have already earned so much notoriety that the laurels have become withered. It may be because of the nature of the criminal offences which the applicant is alleged to have committed, or, because at one time he was a well-known figure in the banking and financial life of Kenya; or because as an individual he is the key figure in this seemingly legal battle which has been and is still raging for a decision whether the State's right to prosecute a citizen for an alleged criminal offence can be ended by the Court. Really it is not a battle between the State and the Court for they both represent the common interest of the people in their joint quest to find the correct solution for the commonweal. It is a search by them both for the principle as to if, and then when, the Court legitimately can say to the State that the intended prosecution must halt because it has become an abuse of the process of the Court, and/or it is also both oppressive and vexatious.

10. These were words full of distilled wisdom which are still applicable today. However since I am aware that there is a family that lost a loved one, I will not order that the accused should not be prosecuted. If the prosecution is mindful of prosecuting for the death that gave rise to this case, then it should do so when ready to avail all the witnesses and make a full disclosure to the court to avoid being oppressive to the accused.

DELIVERED AND SIGNED AT HOMA BAY THIS 24TH DAY OF MARCH, 2022

KIARIE WAWERU KIARIE

JUDGE