



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. E006 OF 2021

CORAM: R.E. ABURILL, J

SYLVESTER MWAI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Originating from Siaya Principal Magistrate's Court Criminal Case No. 1181 of 2019)

DIRECTIONS

1. This file has been referred to the High Court vide directions given/issued by the Senior Principal Magistrate at Siaya, Hon. J. Ongondo in **Siaya PM Cr. Case No. 1181 of 2019 Republic Vs Sylvester Mwai** the accused person who is in remand custody at Siaya G.K. Prisons as he was unable to raise bail grant to him by the trial court.
2. The case is fully heard before Hon. Muthoni Mwangi Resident Magistrate. The trial magistrate is on a long leave albeit she had slated the delivery of judgment to be on 10/2/2021. She was however out of station on other official duties. Thereafter, she proceeded on maternity leave with effect from 2nd March 2021.
3. To date, the judgment has not been delivered and hence the request by the accused to the Senior Principal Magistrate for further directions.
4. The SPM, Hon. J. Ongondo did advise the accused person to write to this court and I have seen the letter dated 19/4/2021 and directions by the Hon. J. Ongondo, Senior Principal Magistrate.
5. As Hon. Muthoni Mwangi Resident Magistrate having the conduct of this case is still a judicial officer of this court who is on maternity leave and not sick leave, I direct that the entire proceedings and trial court record be photocopied and delivered to her in her residence at Nairobi to enable her write judgment in the matter which judgment she will be facilitated by the ICT Officer to deliver virtually to the parties including the Prosecutor and the complainant who shall be notified to attend court. The entire proceedings and exhibits shall be photocopied and placed in a skeleton file which shall be delivered to Hon. Muthoni Mwangi, Resident Magistrate.
6. These directions are issued in review of the fact that the delay in judgment delivery is likely to prejudice the accused person who is in remand custody.
7. Under Chapter Four of the Judicial Criminal Procedure Bench Book, page 109, judgment can be pronounced either immediately upon termination of the trial or at a subsequent time as stipulated in Sections 168(1) and 322 of the Criminal Procedure Code. If the court intends to pass judgment at some subsequent time, it must give Notice of the date and time to the parties and their advocates, if any. While the Criminal Procedure Code does not prescribe a period within which judgment should be pronounced, the right to a speedy trial demands that the trial court issue a judgment without unreasonable delay, especially if the accused is detained,
8. In this case, the accused is detained in prison and already nearly three months have elapsed since judgment was due for delivery save that the Hon. Magistrate was away on Deputy Registrar duties which absence had not been anticipated when she gave the judgment date for 10/2/2021.
9. Article 159(2)(b) of the Constitution obliges courts of law to administer justice without delay.
10. The trial in this case was concluded without delay on 14/1/2021 and judgment date was fixed to be delivered in less than 60 days on 10/2/2021. However, as waiting for August to have the judgment delivered by the trial court will occasion unreasonable delay and prejudicial

to the accused person, I hereby direct that upon the photocopied proceedings and exhibits being delivered to the Hon. Muthoni Mwangi, Resident Magistrate at Nairobi, she will study the file and issue Notice of judgment date to be served upon the parties.

11. This file is closed.

12. I so direct.

Dated, signed and delivered at Siaya this 19th day of April 2021

R.E. ABURILI

JUDGE