



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO.94 OF 2014**

**MARY ATAI MUNG'AU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The only issue for determination relates to the extension of time of the Order for Exhumation made by Hon. Lady Justice H. Mulwa. The reasons given are that the exercise was not conducted due to logistical problems and the time limit of one day.

The supporting affidavit to the application for extension is deposited by the Counsel for the Accused, Mr. Steve Onyango Kabita

It is trite law that one who deposes to the contents of an affidavit ought to be subjected to cross-examination.

For the reason stated above, this court is of the view that Counsel for the Accused is not the best suited person to make such an affidavit as the exhumation and subsequent Postmortem report will definitely form a crucial part of the defence's case and the said Counsel, will not be capable of being subjected to cross-examination unless, he steps down and ceases to act for the Accused.

At this juncture, I shall therefore refrain from making a determination on this application and instead order that the Accused files a Supplementary Affidavit to support the application for extension of time for the order sought for exhumation and preparation of 2nd Postmortem Report, by who, when, where and the costs of such an exercise.

The Supplementary Affidavit shall be filed and served upon the DPP and Counsel holding watching brief within twenty one (21) days from the date hereof.

It is so ordered.

**Dated, signed and Delivered at Nakuru this 21st day of October, 2014.**

**A. MSHILA**

**JUDGE**