

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 43 OF 2011

REPUBLICPROSECUTOR

VERSUS

BENARD KIPYEGON MUTAIACCUSED

RULING

BENARD KIPYEGON MUTAI was initially arraigned before court on 23/9/2011, when it was ordered that his plea would be taken on 17/10/2011. It was also ordered that he be remanded at the Kericho Police Station up to 26/9/2011 after which he would be escorted to the G.K. Prisons at Kericho.

When he appeared before me on 17/10/2011, the learned State Counsel intimated that the accused had yet to be assessed by a psychiatrist and I ordered that he be assessed at the Provincial General Hospital Nakuru.

The accused then appeared before me 25/01/2012, on which date the State Counsel informed the court that though he had requested for the bundle it had yet to be availed by the investigating officer and he sought for an adjournment, which I granted, but by 3/2/2012, when the matter was listed for taking of the plea, the State had once again not received the bundle and at this point though the defence counsel had no objection to an adjournment being granted, he however pointed out that the matter had taken too long. An adjournment was granted till 12/03/2012, but unfortunately, the State had not managed to obtain the duplicate file, and the court was informed that the Investigating Officer had intimated that he was still carrying out investigations and that he would avail it thereafter.

Mr. Koko, who appears for the accused now urges the court to find that the State has not been ready to proceed, and that the accused has not been informed of the charges that face him; that his continued detention is unlawful and illegal which in his view is in violation of Article 50 of the Constitution. He relied on the **R. V. Kamonde H.C.Cr. C. No. (Nyeri) 133/2003**.

I have considered the submissions herein and it is evident from the proceedings herein that the accused was arrested on 22/9/2011, and that though it has been accorded ample time, the State has not been able to avail the committal bundle for the last six months.

I am alive to the fact that under Article 50 (2) of the Constitution, *‘every accused person has the right to a fair trial, which includes the right to be informed of the charge, with sufficient detail to answer it; to have the trial begin and conclude without unreasonable delay; to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;*

Six months is a long time for one to wait to be informed of what charges face him. I would in the interest of justice order that the State do ensure that it proceeds with its case tomorrow, otherwise the accused shall be discharged.

Dated and delivered at Kericho this 24th day of April 2012.

JEANNE GACHECHE
Judge

Delivered in the presence of:-

For the State – Mr. Rogoncho

For the Accused – Mr. Koko.