



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CRIMINAL CASE 41 OF 2003

REPUBLIC.....PROSECUTOR

VERSUS

SIMON GITHINJI
WARUTUMO.....ACCUSED

RULING

The accused person first appeared in court on 26th March 2003 when the plea was taken and a plea of not guilty entered for the same. It was subsequently ordered on 26th August 2003 that the accused be referred to Nyeri Provincial General Hospital for examination by a Psychiatrist which report indicated that he was not fit to plead. He was thereafter referred to Mathare Mental Hospital Nairobi for treatment on 30th September 2003.

There is nothing on record as regards the accused person upto 12th February 2010 when the case was fixed for mention on 29th April 2010 when it was once again ordered that the accused be examined by the Provincial Psychiatrist to prepare a report and file the same in court before 27th May 2010. By 27th May 2010 the said report was not ready.

On 29th September 2010 the report was produced before court which indicated that the accused was mentally sound to take a plea and on 30th September 2010 a plea of not guilty was entered for the accused person and matter fixed for hearing on 31st May 2011 when the prosecution applied for adjournment on the ground that the witnesses were not available.

On 8th December 2011 the accused appeared before me for hearing when the state through Miss Maundu applied for adjournment on the basis that the police file was missing and therefore no witnesses were bonded. The court allowed the application and fixed the matter for hearing on 20th March 2012. On 20th March 2012 the prosecution once again applied for adjournment and the court granted final and last adjournment in the matter and fixed the same for hearing on 18th July 2012 when Miss Maundu once again stated that there were no witnesses bonded and that the investigating officer had not given any reasons.

Mr. Macharia for the accused submitted that since no explanation had been given as to why no witnesses are available the accused person has a right to be set free.

I have looked at this matter in totality and is of the considered view that the accused persons rights to fair trial and stipulated under Article 50(2)(e) which states:

(e) ***to have a trial begin and conclude without delay*** has been violated in the presence case and since the state has not offered any evidence against the same I therefore set the accused free forthwith for lack of evidence against the same and order that the accused person be released forthwith unless otherwise lawfully held.

Dated and delivered at Nyeri this 19th day of July 2012.

J. WAKIAGA
JUDGE

In open court, Mr. Macharia for the accused

Miss Maundu for the state

J. WAKIAGA
JUDGE