



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**Criminal Case 8 of 2002**

**REPUBLIC.....PROSECUTOR**

**-versus-**

**GEOFFREY MAINA NGACHU.....ACCUSED**

**RULING**

**Geoffrey Maina Ngahu**, the **Applicant** herein took out the motion dated 28th September 2011 in which he sought for the following orders:

***“1. That the Applicant\’s rights under Section 72(3) and Section 77(1) of the Constitution in their year 2001 were grossly violated and that he is entitled to an acquittal.***

***2. That the Honourable Court do make such other orders in the interest of justice.”***

The motion is supported by the affidavit of Gathiga Mwangi, learned advocate for the Accused. The office of the Director of Public Prosecutions (D.P.P.), filed the Replying Affidavit of C.I.P. Dokata Ramata to oppose the motion.

I have considered the grounds set out on the face of the motion and the facts deponed in the affidavit for and against the motion. In the motion, the Applicant complains that he was held in police custody for more than 14 days before being taken to court. He has alleged that he was arrested on 28th February 2001 and charged with the offence of Murder the same day. The Applicant avers that on 4th April 2001, he was taken before the Principal Magistrate\’s Court, Kangema where he was committed to the High Court for trial on 11th October 2001. The accused was finally produced before the High Court on 28th February 2002 for plea. The accused\’s complaint is that it took the police a month and 7 days to take him before the Kangema Principal Magistrate\’s Court and four months. He has now beseeched this court to find that his constitutional rights were violated hence he is entitled to an acquittal.

The prosecution opposed the application by relying on the affidavit of C.I.P. Dokata Ramata. It is the explanation of the Investigating Officer that the accused was arrested and beaten by members of public before being re-arrested by the police. He was therefore held in police custody for his own personal safety and the fact that he posed as a danger to the public due to his mental illness. It is also alleged that the accused person did not cooperate with the investigation hence the delay to conclude investigations. Under **Section 72(3) of the previous Constitution** a suspect for a capital offence was required to be presented before a court within 14 days from the date of arrest. The prosecution was enjoined to give plausible reasons if there was a delay in taking the accused to court within the 14 days. In this case the office of the D.P.P. has explained that the accused was mentally ill hence it was not safe for the public to have him released. It is also stated that it was not safe for him to be released because he could have been lynched by

the public. There is also an allegation that the accused did not cooperate with the investigators. I think the critical issue before this court is whether the explanation given by the prosecution is plausible. There is no doubt that the accused person was held in police custody for one month and 7 days before being taken before the Kangema Principal Magistrate's Court for committal proceedings. The committal proceedings shows that by 29th March 2001, the accused was mentally unsound. When he appeared for plea on 28th February 2002, it would appear the Applicant was still mentally unsound hence the court referred him for mental examination by a Psychiatrist. The question is why wasn't the Applicant taken before court for close to 35 days? If the police wanted more time to hold him, they should have sought permission from court! There was no good explanation given to justify the Applicant being held in police custody for all that period. I am convinced that his constitutional rights were breached under **Section 72(3)** of the **previous Constitution**. The accused has beseeched this court to acquit him. Under **Section 72(6)** of the **previous Constitution**, the Applicant is entitled to compensation.

In my view, it is in the best interest of justice that the Applicant should not but acquitted but he is at liberty to seek for compensation. I say so, because there is need to also take care of the interest of the victim who lost his life in this process. In the end, I allow the motion as proposed herein-above. For avoidance of doubt, it is declared that the accused was held in police custody for more than 14 days hence his Constitutional rights under **Section 72(3)** of the Constitution were breached. The accused is free to seek for compensation from those who breached his Constitutional rights. The case to be fixed for hearing on priority basis.

**Dated and signed this 17th day of august,2012.**

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**J. K. SERGON**  
**JUDGE**

Delivered this     day of           2012 by Hon. Mr. Justice Wakiaga on behalf of Hon. Mr. Justice J. K. Serгон.

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**J. WAKIAGA**  
**JUDGE**