



**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISC. APPL. NO.21 OF 2010**

(From original BGM CM Cr. No.1411 of 2009)

**JAMES WAMBETE RASHID
YUSUF MABAJE
SAM BUYI KIEI**

RONALD OKUNGU OBWIRE.....APPLICANTS

VRS

REPUBLIC.....RESPONDENT

RULING

This is a ruling on a joint application by the four Applicants dated 19/4/2010. The application seeks for a declaration that constitutional rights of the Applicants have been violated in terms section 71 (1) of the former constitution. The facts leading to this application are that the Applicants are facing charges of robbery with violence contrary to section 296 (2) of the Penal Code in Bungoma Chief Magistrate Court Criminal Number 1411 of 2009. The said criminal case is a retrial that was ordered by the High Court on 18/6/2009 as a result of an appeal against conviction of the same offence by another court. The Applicants deponed that they were arrested on 7/7/2005 by police officers from Malaba Police Station and charged with the offence of robbery with violence. The case ended with a conviction which was set aside on appeal. The Applicants complain of delay in the retrial which has not been concluded. At the time of filing this application the Applicants contend that the case has been fixed for hearing 13 times and it is yet to be concluded.

When the application came for hearing the state counsel Mrs Leting informed the court that the case had a hearing date on the 1/11/2010. The court fixed this matter for mention pending a report from the state counsel on the progress of the case. On the 22/11/2010 the state counsel reported to the court that there were still two witnesses who could not be traced and that the trial court had given a last adjournment in the case. On the next hearing date 28/12/2010 there were no witnesses and the court adjourned the case to 9/3/2011 when only one witness turned up. The case has now been fixed for hearing on 13/5/2011. The state counsel conceded to this application on grounds that the District Criminal Investigation Officer has not been co-operative in the matter.

Considering that the accused persons were first arraigned in court on the 7/7/2005 and convicted on the 23/5/2008, the first case took three (3) years to hear and finalize. The retrial was ordered on the 18/6/2009 and the plea before Chief Magistrate in Criminal Case No.1411 of 2009 taken on 30/6/2009. It would have been prudent for the trial magistrate to ensure that the re-trial was fast-tracked. However this case has been heard by two courts the first magistrate Hon. G. Sogomo SRM heard one (1) witness on the 27/10/2009. Thereafter, the case was adjourned several times until the 27/4/2010 when it was taken over by Hon. F. Kyambia SRM who started the matter afresh. Between the 1/11/2010 and the 7/2/2011 three witnesses had been heard. I agree with the Applicants that the case has taken long to be determined considering that it is a re-trial since the plea was taken the matter has taken almost two years and it is yet to be concluded. The delay has been mostly caused by the prosecution's failure to avail witnesses. Since the case has a hearing date of 13/5/2011 this court will give the prosecution the last chance to have the

case concluded within 30 days from the date of this ruling. Failure to finalize the matter calls for further orders of this court. The trial court to be served with a copy of this ruling. Mention on 20/6/2011.

F. N. MUCHEMI

JUDGE

Ruling delivered in open court this 18th day of May 2011 in the presence of the State Counsel Mr. Ogoti and the Applicants.

F. N. MUCHEMI

JUDGE