



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MURDER CASE NO. 43 OF 2011

REPUBLIC ----- PROSECUTOR

-VERSUS-

GEORGE OTIENO ONYANGO ----- ACCUSED

RULING

The accused herein was first arraigned in court on the **27th of July, 2011**. The plea in this matter was deferred for him to appear before a judge.

On **2nd August, 2011** the accused appeared before a judge but the plea was deferred to allow for psychiatric examination and appointment of counsel. On **21/9/2011** the accused intimated he had seen a doctor however State Counsel did not have a medical report and the plea was deferred. On **3/10/2011** the State Counsel did not have the report and again the plea was deferred. On **17/10/2011** accused not produced no reason was given. On **24/10/2011** the story by the State Counsel changed to the effect that the court order was not clear. This court gave specific orders and intimated that it will not hold the accused in custody unless he pleads to the offence. No report has been available again.

The Constitution of this Country protects the rights of those arrested as it does of other Kenyans. This was as a result of the inhuman and degrading manner in which remandees and prisoners were treated under the old system.

The court as custodian of the law owes a duty to all those who appear before it.

S. 47 (1) of the Constitution provides;

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

S. 47 provides;

“1. An arrested person has the right

a) to be informed promptly in a language that the person understands, of;

i) the reason for the arrest

ii) ----

iii) ----“

i) To be brought before a court as soon as reasonably possible, but not later than.

i) Twenty four hours after being arrested; or

ii) if the twenty four hours ends, outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court days.

g) At the first court appearance to be charged or informed of the reason for the detention continuing, or to be released.”

In my view the state simply brought the accused in court as a technical measure to beat Article 49 1(1) without taking into account other Sections of the Law.

It is not enough to inform the accused and require him not to plead. My reading of Article 49 (g) is that the accused should have the charge read to him and he pleads or otherwise he be released.

The accused has been held for close to 4 months against his rights as spelt under Article. 49 1(i) and (g) of the Constitution.

He cannot take plea as his mental state is unknown.

Since the law is clear that he should plead or be released in the circumstances I have no option but to release him forthwith unless he is lawfully otherwise held.

DATED AND DELIVERED THIS 27th DAY OF October, 2011.

**ALI-ARONI
JUDGE**

In the presence of:

..... for State

..... Accused person(s) present