



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

OF KISII

Criminal Case 2 of 2007

REPUBLIC PROSECUTOR

VERSUS

CONCEPTA KWAMBOKA GICHANA ACCUSED

RULING

The applicant was charged with murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars of the offence were that on the 8th day of September 2006 at Rieteba sub location, Nyanguru location in Kisii Central District, she murdered **James Gichana Abuga** hereinafter referred to as “**the deceased.**”

In the course of the trial the applicant filed an application under **section 65, 72 (3) and 77 (1) & (2)** of the **Constitution**. She urged the court to make a finding that her constitutional rights had been violated because she had been held in custody for a period of 129 days before she was arraigned in court.

In her affidavit in support of the application, the applicant deposed that she was arrested on 11th September 2006 and taken to Rioma police station but was not taken to court until 17th January 2007 when she appeared before a Deputy Registrar who ordered that the plea be taken on 7th February 2007. She averred that there was no reasonable explanation for such delay.

The police were unable to give any explanation as to why the applicant was kept in police custody for all that time. It is now trite law that such unexplained delay amounts to violation of an accused’s constitutional rights, see **ALBANUS MWASIA MUTUA -VS- REPUBLIC**, Criminal Appeal No. 120 of 2004. In the circumstances, the applicant’s application must succeed with the consequence that the charge of murder that had been preferred against her cannot be sustained. The applicant is acquitted of the charge of murder and is hereby set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED, SIGNED AND DELIVERED AT KISII THIS 8TH DAY OF MARCH, 2010.

D. MUSINGA
JUDGE.
8/3/2010

Before D. Musinga, J.

Mobisa - cc

Mr. Gitonga for the state

Mr. Kaburi for the accused

Accused - present

Court: Ruling delivered in open court on 8th March, 2010.

D. MUSINGA
JUDGE.