

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI Miscellaneous Criminal Application 31 of 2008
ISAAC MUNENE NJUGUNA
EVANSON KARIMI KINYUA.....APPLICANT
ANTHONY NJUGUNA
VERSUS
REPUBLIC.....DEFENDANT
(Arising from Kerugoya Senior Resident Magistrate’s Criminal Case No. 3 of 2007)

RULING

The applicants herein namely **ISAAC MUNENE NJUGUNA, EVANSON KARIMI KINYUA** and **ANTHONY NJUGUNA MUNDIA**, were arraigned before the Senior Resident Magistrate’s Court, Kerugoya to face a charge of manslaughter contrary to *Section 202* as read with *Section 205* of the Penal Code vide **KERUGOYA S.R.M.C. CR.C. NO. 3 OF 2007**. The particulars of the offence are that on 16th April 2007 at Gathera village in Kirinyaga District of the Central Province, the trio unlawfully killed Bernard Waweru Muriithi. The case proceeded for hearing before J. N. Onyiego, learned Senior Resident Magistrate. The prosecution closed its case after presenting the evidence of nine witnesses. At the close of the prosecution’s case, the Applicants submitted that their constitutional rights under *Section 72 (3)* of the Constitution were breached. The learned Senior Resident Magistrate framed up the issues and referred the matter to this court.

When the reference came up for hearing before this Court, Mr. Muthui Kimani, learned advocate for the Applicants, urged this Court to find that the Applicants’ constitutional rights were breached in that they were held in Police custody for more than three months before being arraigned before a Court of Law yet the Police should have taken them to court within 24 hours. Miss Ngalyuka, learned Senior State Counsel, opposed the reference by relying on the explanation given by the prosecutor before the trial court. I have looked at that explanation. It is admitted the Applicants were arrested on 16th April 2007. It is said investigations were started and completed on 31st April 2007 and that the O.C.S. sent the investigation file to the D.C.I.O. for perusal. The D.C.I.O. is said to have forwarded the file to P.C.I.O. on 8th May 2007. The P.C.I.O. returned the file to the D.C.I.O. on 16th May 2007 for further investigations. The file was taken back to the P.C.I.O. who in turn forwarded the file to the Provincial State Counsel, Nyeri on 8th June 2007. It is said the Provincial State Counsel advised the Police to prefer a charge of manslaughter on 28th June 2007 and on 29th June 2007 the Applicants were taken for plea. It is said that the delay was reasonable owing to the seriousness of the offence.

I have considered the rival submissions. There is no dispute that the Applicants were held in Police custody for three (3) months before being taken to court for plea. It is said that the offence is a serious felony which needed thorough investigation. The recorded evidence shows that the witness statements had been recorded by 31st April 2007. It would appear the delay between 31st April 2007 and 28th June 2007 was due to laxity on the part of the D.C.I.O.’s office and that of P.C.I.O.’s office. In my considered opinion, I find the delay of three months to be inordinate. The explanation given for the delay is not plausible. The Applicants’ constitutional rights were blatantly breached. No court of law can countenance such an inordinate delay. The explanation given for the delay is not acceptable. Where there is an unexplained delay or an unacceptable explanation of breach of constitutional rights, the victim must be acquitted irrespective of the nature and strength of the evidence which may be or have been adduced. Having come to the conclusion that the Applicants’ constitutional rights were breached, I am constrained to dismiss, which I hereby do, the charge laid before the subordinate court. Consequently, the Applicants herein namely: **ISAAC MUNENE NJUGUNA, EVANSON KARIMI KINYUA** and **ANTHONY NJUGUNA MUNDIA** are hereby acquitted and ordered set free forthwith unless lawfully held.

Dated and delivered at Nyeri this 28th day of May 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Kingori holding brief for Mr. Muthui for the Accused. Makura for the State.