



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**

**Criminal Case 71 of 2005**

**REPUBLIC:.....PROSECUTOR**

**VERSUS**

**STEPHEN KIPNGETICH TERER:.....ACCUSED**

**RULING**

The accused has taken out a Notice of Motion under section 72(3) (a) (b) of the Constitution of Kenya and all other enabling provisions of the Law for orders that his constitutional rights were breached by reason of being held beyond 14 days on a charge of murder and that his continued detention violates his said constitutional rights. He states that he was arrested on 31<sup>st</sup> May 2005 and was first arraigned in court on 14<sup>th</sup> July 2005 and finally took plea on 21<sup>st</sup> July 2005. He says that he was held for exactly one month beyond the 14 days and hence the breach of his constitutional rights and he is entitled to an acquittal of the charges facing him.

A Replying affidavit in opposition to the application is sworn by Police Constable Bernard Simiyu who states that he took over the investigations of the case from Police Constable Jackson Kemboi and he admits that the accused was arrested on 31<sup>st</sup> May 2005 and that the postmortem on the body of the deceased had been performed on 21<sup>st</sup> May 2005. That the arrest of the accused prompted witnesses to come forward and record their statements and the witness who has given evidence as PW1 recorded her statement on 7<sup>th</sup> June 2005. That the delay in presenting the accused to court was caused by the delay in having his age assessed as the Radiological services at the Moi Teaching and Referral Hospital had been out of order at the time and as the age of the accused was not known, this had to be ascertained before taking him to court. That age assessment was finally done on 23<sup>rd</sup> June 2005, and thereafter the file was processed in the usual manner through the D.C.I.O and the state Law Office and the accused finally took plea. The deponent states that the delay was not unreasonable and it was not intentional. Counsel appearing herein urged their respective positions at the hearing of the application.

I have given due consideration to the application and to submission by both counsel. A delay of one month is easily admitted by the state and the same is explained. It is important to know the age of an accused person as a minor and an adult will obviously receive different treatment at trial and at sentencing. I therefore accept the reasons given for the delay and more so because the same have not been denied. I also find that a delay of a month and when that delay is explained to the court's satisfaction is not unreasonable delay. The accused states that because of such delay then his constitutional rights were breached and he is therefore entitled to an acquittal. That is not the law. An acquittal is not an automatic result of a constitutional breach. Summary procedure must only be employed in the clearest of cases but the best way is that the Law takes its course and the accused undergoes trial and be acquitted only if there is no evidence calling for his conviction. Additionally in this case the evidence and cross – examination of six (6) prosecution witnesses has been undertaken and there is the evidence of only two more witnesses to go. The accused suffers no prejudice whatsoever by the taking of the remaining evidence. Justice cuts both ways, the way of the accused and the way of the victim. In this case the law must take its full course and consequently the application under consideration is found to be lacking in merit and it is accordingly dismissed.

**DATED AND SIGNED AND DELIVERED AT ELDORET THIS 6TH DAY OF May 2010.**

**P.M.MWILU**  
**JUDGE**

IN THE PRESENCE OF:-

Andrew Omwenga - Court clerk  
Present - Accused  
Chemoiyai - Advocate for accused  
Mr. Chirchir - Advocate for state