



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE 1 OF 2009

REPUBLIC PROSECUTOR

VERSUS

MERCY KEMUNTO ACCUSED

RULING

The applicant filed a petition dated 12th April, 2010. She stated that on 11th December, 2008 she was arrested in connection with the death of one **Meshack Onyiego Amwata**. She was arraigned in court on 2nd January 2009. On that day she was taken before the deputy registrar, who fixed the date for plea on 12th February, 2009. She claimed that she had been held incommunicado for a period of 20 days. She urged the court to find that her constitutional right as provided for under **section 72 (3) (b)** of the **Constitution of Kenya** had been violated.

The hearing of the petitioner's case commenced and several witnesses have testified.

Police Constable Nicholas Kipkorir Koech of Kisii Central

Police station swore a replying affidavit and stated that he arrested the petitioner on 12th December, 2008. He completed the

investigations on 24th December, 2008 and forwarded the file to the District Criminal Investigations Officer, Kisii for onward transmission to the Attorney-General's office. On 29th December, 2008 the file was forwarded to the Attorney-General's Office Kisii. On 31st December, 2010, Mr. Kemo, Senior Principal State counsel returned the file to the District Criminal Investigation Officer having advised that the petitioner be charged with murder. PC Koech prepared the information and soon after the New Year holiday the petitioner was arraigned in court on 2nd January 2009.

From the above information, it is evident that the petitioner was not taken to court within 14 days as required. That notwithstanding, it is worth noting that there were several public holidays between 12th December 2008 and 2nd January 2009. Over the said period the police did all they could to complete their investigations and submit the file to the office of the Attorney-General. The investigations were completed within a period of 12 days. It is mainly the Christmas and New Year holiday which caused a delay of 7 days.

In my view, that was not inordinate delay and it cannot be said that the police deliberately caused the petitioner to remain in unlawful custody. The explanation that was given by Police Constable Koech is satisfactory. Consequently, I dismiss this petition. The petitioner's case shall proceed in the usual manner.

DATED, SIGNED AND DELIVERED AT KISII THIS 12TH DAY OF JULY, 2010.
D. MUSINGA

JUDGE.

12/7/2010

Before D. Musinga, J.

Mobisa - cc

Mr. Mutai for the state

N/A for the Accused

Court: Ruling delivered in open court on 12th July, 2010.

D. MUSINGA
JUDGE.