



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL CASE NO. 42 OF 2006

REPUBLIC.....PROSECUTOR

VERSUS

LUKA KIMELI
RONOACCUSED

RULING

LUKA KIMELI RONO faces a charge of murder. He has now taken out a preliminary objection that he having been arrested on 6th September 2006 and held in police custody for a period of forty eight (48) days in violation of the provisions of Section 72 (3) of the Constitution, the proceedings and the charge are a nullity and ought to be declared as such and he be discharged or released. His advocate submitted that the reasons given by the police for the delay were not plausible and are mere justifications for the delay. Relying on various authorities he submitted that the accused should be acquitted of the charges as the same are a nullity on account of the breach of the provisions of Section 72 (3) of the Constitution.

Police Constable Charles Chamwada swore an affidavit pursuant to Section 72 (3) (b) of the then Kenya Constitution to explain that the accused was brought to Court as soon as it was reasonably practicable. He swore that Kapsabet Police Station did on the 6th of September 2009 receive a report that a man had strangled an infant to death. Investigations commenced and on 6th September 2009 the accused herein who is the father of the infant was arrested as the suspect. Post mortem examination was conducted on 13th September 2006 and witnesses recorded their statements. These statements required to be typed and the Police Station at Kapsabet did not have a typewriter and no funds to facilitate typing and it took a while to acquire the funds for the purpose. He swore further that a statement from the mother of the infant was not recorded in time as she was too distraught to record one as she had just given birth to the infant only for the father to kill the child. The police waited for her to calm down sufficiently to record the statement. Additionally there was shortage of police officers to facilitate the processing of the file between the Divisional Criminal Investigation office and the State law office, Eldoret. That is what caused the delay. Mr. Kabaka for the State submitted that the delay was adequately explained.

The Constitution of Kenya in Section 72 (3) (b) requires that if there be delay in presenting an accused in Court then the prosecution do satisfy the court that the accused was presented before court as soon as was reasonably practicable. In this case it was not denied that the accused was arrested by irate members of the public on the 6th September 2006. It was similarly not denied that he was presented before court on the 6th October 2006 and later took his plea on 26th October 2006. those dates are clearly borne out by the record. By simple arithmetic the accused was first presented to Court thirty one (31) days

after his arrest. Discounting the fourteen (14) days within which he should have been presented to court leaves seventeen (17) days outside the time prescribed by the law. My duty is therefore to determine whether the delay of seventeen (17) days is adequately explained by the prosecution and whether I accept that explanation.

No purpose would be served by presenting a suspect before Court before investigations are complete. Investigations include the recording of statements from witnesses to prove the offence. In this case the statement of the mother of the deceased infant is, to my mind, a crucial one, central to showing what led to the infant's death. That she was distraught after the birth and death is something any reasonable person can understand. That the police station was poorly manned and funded cannot be blamed on the prosecution, they did their best in the circumstances they found themselves in. I totally accept the reasons given for the delay. It must at all times be remembered that the rights of the accused person do not rank higher than those of the victim and further that even where a breach of constitutional rights is proved, that does not automatically lead to an acquittal. In this case I find that the accused was presented to court as soon as was practically reasonable and none of his constitutional rights were breached in the circumstances of the case. Accordingly I dismiss the preliminary objection as one without merit and order that the accused will have his case proceed to its logical conclusion vide a hearing.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 30TH DAY OF SEPTEMBER 2010.

P. M. MWILU
JUDGE

In the presence of:-

Accused

Kitur holding brief for Sirtuy Advocate for accused

Kabaka Counsel for the State

Andrew Omwenga – Court Clerk

P. M. MWILU
JUDGE