



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Case 54 of 2007**

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

**VERSUS**

**JULIUS KITONGA KIMEU::::::::::::::::::::::::::::: ACCUSED**

**RULING**

The accused **JULIUS KITONGA KIMEU** was charged, on 15/8/2007, with the murder of **SAMUEL WAMBUA** contrary to Section 203 as read with Section 204 of the Penal Code, Cap. 63, Laws of Kenya.

The offence is alleged to have been committed on 14/6/2007 at Kayole Estate, Mwingenye Village, Nairobi.

On 8/7/08 the accused challenged the legality of these proceedings on the grounds, **inter alia**, that: he was arrested on 4/6/07 and kept in Kayole Police Station until 5/9/07 when he was brought to court and took the plea. These facts are conceded by the prosecution and the case by the applicant is that on the basis of the above facts, these proceedings violated and continue to violate his Fundamental Rights as enshrined in Section 72(3) (b) of the Constitution. That Section is to the effect that a person arrested/detained upon reasonable suspicion of having committed a capital offence shall be brought to court and arraigned as soon as is reasonably practicable, and at any rate within 14 days of his/her arrest.

Any proceedings instituted after the expiry of the 14 days period are illegal, null and void and the accused must be released unless the prosecution can explain the delay to the satisfaction of the court.

It is the case by the applicant that the prosecution has not discharged its duty of explaining the delay, and upon that basis, he should be acquitted and released forthwith.

In support of his case, the applicant cited and relied on the authority of **ALBANUS MWASIA MUTUA VS. REPUBLIC** Criminal Appeal No. 120 of 2004, where the Court of Appeal gave a non-exhaustive list of instances where the delay in bringing the accused to court is acceptable. These include: where the accused fell sick and/or was hospitalized and therefore could not be brought to court within the stipulated period of 14 days; where there is no court of competent jurisdiction before whom the accused could be brought; or where the vehicle carrying the accused to the court breaks down and the accused cannot therefore be brought to the court within the required period of 14 days.

In opposition to the application, while conceding the delay, submitted that they rely entirely on the Affidavit of P.C. Kyalo Munyao and they have nothing useful to add thereto.

I have perused the Affidavit relied upon by the prosecution and I have found and concluded that the same is no more than a chronology of the bureaucratic delays in the various dockets within the prosecution process. There is no explanation as to why the accused was not brought to court within the stipulated period or why the prosecution could not seek extension of time under Section 72(4) of the Constitution.

The Affidavit by P.C. Kyalo Munyao is a far cry from the test and standard set in the **Mutua** case, **supra**.

Accordingly, I find and hold that the rights of the accused, as per Section 72(3)(b) were, and continue to be, violated by these proceedings whose genesis is an illegality, the same having been instituted in breach

of the provisions of the mandatory Constitutional provisions.

I thus declare these proceedings illegal, null and void and acquit the accused. I further order for his immediate release unless he is otherwise lawfully held.

DATED and delivered in Nairobi this 27<sup>th</sup> Day of January, 2009.

**O.K. MUTUNGI**

**JUDGE**