

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

CRIMINAL CASE 65 OF 2007

REPUBLIC.....PROSECUTOR

VERSUS

1.DANIEL ATEM THON

2.BUL DENG BUI

3. BOL MARK AKUIEN.....ACCUSED

RULING

An application has been made by the Defence that this criminal trial against the three accused persons be terminated and they be set at liberty on the grounds that the trial has not been completed within one year since the accused were first arraigned in court. The Provisions of the Children Act (No.8 of 2001) and the Convention on the Rights of the Child have been cited to support the application, which is based on the ground that the three accused persons were minors when the offence with which they were charged was committed on the 13th of July, 2007. They have now attained the age of majority.

Submitting for the three accused defence counsel Mr. Khan stated that is being 17 months since the plea was taken and the trial having not been completed, the accused should be acquitted in accordance with Section 12(4) of the Childrens Act. The State opposes the application with Mr. Njogu, learned State Counsel, submitting that Section 12 (4) of the Childrens Act have been declared ultra vires the constitution by the Court of Appeal.

Submissions by the two sides herein have been duly considered. Whereas this court is alive to the fact that the accused persons herein are no doubt entitled to an expeditious trial and the right to the same accordingly guaranteed under the Constitution and specially provided for under the Childrens' Act, I do not consider their application worthy of merit. This is because they themselves have, either deliberately or otherwise contributed to the delay in the hearing and disposal of the trial, firstly by making and then withdrawing an application for bail (among other things) in which they raised the same issue now being raised but not pursuing the same the conclusion.

They later made an offer to plead to a lesser charge which offer was considered by the State but found inappropriate in the circumstances. Save for one instance when the court was indisposed this court has been keen to have the trial proceed and be concluded expeditiously in accordance with the law. 6At all times the earliest dates available for hearing were offered to the accused persons who, instead of having the matter set down for hearing elected to pursue an ill advised course twice, hence delaying the proceedings. For the reasons stated, the application to terminate the proceedings and to acquit the accused persons of the charges herein is hereby refused.

DATED, SIGNED and DELIVERED at Nakuru this 11th day of February, 2009.

M. G. MUGO

JUDGE