



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

**Criminal Case 66 of 2006**

**REPUBLIC**

**-VS-**

**JOSEPH KARANJA NJOROGE**

**RULING**

The accused has been charged for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, Cap.63, Laws of Kenya. The particulars of the offence as stated in the information are as follows:

“On the 10<sup>th</sup> February, 2006 at Mugutha Village in Thika District within Central Province murdered JOHN GIKONYO.

From the record, it is apparent that the accused was first arraigned in court on 5<sup>th</sup> July, 2006. After the plea was taken a hearing date was fixed. Consequently, the court heard five witnesses before the prosecution closed its case. Thereafter, the court delivered its ruling in which it put the accused on his defence. On 13<sup>th</sup> February, 2008 the accused gave an unsworn statement in his defence. Surprisingly, when the defence counsel was due to make his final submissions, he opted to make a preliminary objection. Since the same touched on fundamental rights of the accused, the court agreed to hear it. In his submissions, Mr. Masara, defence counsel submitted that the accused was arrested on 10<sup>th</sup> February, 2006 and was brought to court on 4<sup>th</sup> July, 2006. He was of the view that the accused was kept in custody for over three months and that his constitutional and fundamental rights under Section 72 (3) of the Constitution were violated. Further to the above, he also submitted that the trial is null and void irrespective of the weight of the evidence that the prosecution has to support the charge. That apart, he also submitted that there is no known cure under the law and hence he prayed that the accused should be “acquitted” and set free. In support of the above submissions, Mr. Masara quoted the following authorities:

ALBANUS MUTUA –VS- REPUBLIC

CRIMIANL APPEAL NO.120 OF 2004

PAUL MWANGI MURUNGA –VS- REPUBLIC

CRIMINAL APPEAL NO. 35 OF 2006

On the other hand, the state through Mr. Bifwoli, then Principal State Counsel, opposed the application on the ground that the same is an abuse of the court process. On that note, he urged the court to dismiss the same. Apart from the above, he further submitted that the prosecution has already closed its case and that the court has made a finding that the accused has a case to answer. In addition, the accused has already given his defence and that what is only remaining is the judgment of the court. Besides the above, Mr. Bifwoli also pointed out that throughout the hearing of the case, the defence never raised the issue of violation of the fundamental rights of the accused. Further to the above, he pointed out the difficulties of re-opening up the case to tender fresh evidence. To support his submissions, he quoted the case of

REPUBLIC –VS- CHARLES NJOROGE NJENGA

CRIMINAL CASE NO.64 OF 2006

In the above case, the court stated that it would be unprocedural to introduce fresh evidence at that the stage. The said Ruling was made at the stage where the defence counsel had submitted that there was no case to answer. Mr. Bifwoli urged this court to adopt the reasoning in the above case. Apart from the above, he also brought to the attention of the court, Section 72 (6) of the Constitution of Kenya and stated that the accused is entitled to compensation for violation of his fundamental rights.

This court has carefully considered the entire evidence and submissions on record. No doubt, the prosecution called five witnesses and closed its case on 4<sup>th</sup> October, 2007. Thereafter on 8<sup>th</sup> November, 2007 the court ruled that the accused had a case to answer. After two adjournments following the absence of the defence counsel viz Mr. Masara, the accused gave his defence on 13<sup>th</sup> February, 2008. Consequently, the defence counsel was allowed to make final submissions on 25<sup>th</sup> February, 2008. Instead of doing so, he opted to inform the court that the fundamental rights of the accused had been contravened. Subsequently, the court allowed him to make his application. From the record, it is obvious that the accused had a qualified defence counsel from 20<sup>th</sup> July, 2006. Unfortunately, both the accused and his counsel waited for about two years before making the preliminary objection. By then, the accused had already been put on his defence and had given his unsworn statement. What is now remaining is only the summing-up and Judgment. Obviously, the application is a total abuse of the court process and hence cannot be allowed at all. I am of the considered opinion that the principles of justice and fair play would be better served by the case being heard upto its logical conclusion. However, the fact that the court has rejected the application does not mean that the accused is in any way “guilty”. He is innocent till proved otherwise. The upshot is that I hereby reject the application since the same has no merits at all. Due to the above, the summing-up will now be delivered on 17<sup>th</sup> March, 2009.

Ruling read signed and delivered in open court in the presence of the accused, Mr. Masara Defence Counsel and Mr.Ong’ondo State Counsel.

Order: One assessor to be paid allowances.

Order: Principal Deputy Registrar to summon all the assessors.

**MUGA APONDI,**

**JUDGE.**

**10<sup>TH</sup> FEBRUARY, 2009.**