

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Case 10 of 2006

REPUBLIC.....APPLICANT

-VSKYALO

MUIA.....1ST DEFENDANT

THOMAS KILONZO MBITHE.....2ND DEFENDANT

RULING

This ruling relates to an application that was made by Ms. Celine Odembo on behalf of the A2 — viz, Thomas Kilonzo Mbithe. In her application she submitted that Mutungi J. had actually released both the accused in his ruling dated 29th September, 2008. However, after about six months, the A2 was re-arrested and re-charged in court on 4th March, 2009. In addition to the above, she also claimed the police were misusing their powers to intimidate and harass the accused person. From the foregoing, it is crystal clear that the preliminary objection was handled by Mutungi J. who has now retired from the public service following a chequered career. Having gone through the proceedings of 12th June, 2008, it is crystal clear that the defence Counsel only referred to the A1 in her submissions. Apart from the above, the proceedings clearly show the trial Judge had stopped the defence Counsel from making any submissions on the A2. He went further and gave directions that the preliminary objection relating to A2 should be filed separately since the same raised different legal issues. Further to the above, the Ruling dated 29th September, 2008 refers to only one accused person. Four examples would suffice to drive home the point. On pg. 1 — the trial Judge stated at the end the following words:

***“inter alia that he was*”**

On pg. 3 — line two, the trial Judge stated the words

...”that the accused was kept in police custody for 77 days”

Similarly, on pg. 4 — line five, the trial Judge used the following words:

...”and the accused was already in custody, ...”

Lastly, on pg. 5 — at line seven, the learned Judge stated as follows:

..., “unless he is otherwise lawfully held ...”

The words used by the learned Judge are very explicit and succinct. All those words refer to one person. The words are in singular. They **cannot** be said to be vague by any stretch of imagination. The upshot is that I hereby find that it was only the A1 who was released by the learned Judge. I hereby reject the

application by the defence counsel in relation to the A2. The court will go ahead and fix the hearing date for the A2 who is being held in custody lawfully. Those are the orders of this court.

MUGA APONDI

JUDGE

Ruling read, signed and delivered in open court in the presence of the A2;

Ms. Odembo Celine Defence Counsel

Ong'ondo State Counsel

MUGA APONDI

JUDGE

22ND MAY, 2009

Court:

Hearing on 29th and 30th July, 2009 in Court No. 3. Accused remanded in custody.

MUGA APONDI

JUDGE

22ND MAY, 2009