



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL CASE 6 OF 2008

REPUBLIC:.....APPLICANT

VERSUS

VINCENT CHEMJOR ALIAS DAUDI:.....1ST RESPONDENT

PETER KIPROP CHEMJOR:.....2ND RESPONDENT

R U L I N G

Vincent Chemjor alias Daudi and Peter Kiprop Chemjor are the accused persons herein. They jointly are charged with the murder of Harun Kimotol, Francis Kandie and Charles Chepkitony on the 23rd November 2007 at Kasisit Trading Centre Kabartonjo Division in Baringo District of the Rift Valley Province. They were brought to the High Court on 18th February 2008 when plea was fixed to be taken on 28.02.2008. For reasons not recorded on the court file plea was not taken on that date but it was eventually taken on 6th March, 2008 and hearing dates given. By the hearing date the accused persons through their counsel had filed Notices of Preliminary objection. The second accused person was the first to file through his advocate Mr. Kigamwa. The said objection is on the grounds that he had been held in police custody for a period of more than 14 days on suspicion of having committed a capital offence without being arraigned in court contrary to section 72(3) of the constitution of Kenya; That the delay in arraigning the second accused person before the court abrogates his constitutional right to a fair and expedient trial within a reasonable time as stipulated by section 77(1) of the Constitution of Kenya; and that the inordinate delay in arraigning him before court within 14 days as stipulated infringed his constitutional right under section 77(1) of the Constitution of Kenya to be informed of the charges facing him. He then prayed that the information be quashed and he be acquitted for the three counts of murder he faces.

The 1st accused person raised the preliminary objection that the inordinate delay in arraigning him before court and holding him in custody for more than 14 days as stipulated infringed his constitutional rights under sections 72(3) and 77(1) of the constitution of Kenya to be informed of the charges facing him. He similarly prays that the information be quashed and he be acquitted of all counts of murder he faces.

At the hearing Learned Counsel for the 2nd accused submitted that the 2nd accused was arrested on 24th November 2007 without a warrant of arrest and put into police custody. The information which led to the

2nd accused person being presented to court was prepared on 14th February 2008 and he was first brought to court on 6th March 2008 when the plea was taken. He submitted that that was a period of 90 days and an abuse of the accused's right to liberty. He added that the delay in informing the accused of the charge he was facing and so the sections of the constitution of Kenya quoted above were infringed and the 2nd accused should be acquitted of the murder charges he faces. He referred the court to the cases of **Nairobi Criminal appeal No. 119/2004 – Gabriel Githuku –vs- Republic and Nakuru Criminal Appeal No. 35/2006 – Paul Mwangi Murunga –vs- Republic.**

Learned counsel for the 1st accused person associated himself fully with the submissions of counsel for the 2nd accused and added that from the proceedings all necessary documentations were ready by 5th December 2007 and there is no reason why the accused was not brought to court within the stipulated 14 days. Counsel described a delay of 84 days which is not explained as being inordinate. He placed reliance on the case of **Paul Mwangi Murunga** above.

The prosecution conceded that the accused persons were arrested on 24/11/2007. However they denied that the accused persons were in police custody for that time. The then Divisional Criminal Investigation Officer Baringo District one Judah Muthee vide his letter of the 18th June 2008 explained that on the 7th December 2007 the accused persons were arraigned in court before the Senior Resident Magistrate's court at Kabarnet charged vide Criminal Case No. 717/2007 with the offence of assault causing actual bodily harm contrary to section 251 of the Penal code. They also faced a similar charge vide case No. 764/2007 at the same court and in Criminal case No. 765/2007 they faced the charge of causing grievous bodily harm contrary to section 254 of the Penal code. The said officer added that the accused persons were remanded in custody awaiting the hearing of their cases which were fixed to be heard on 26th June 2008 as they were not on bail pending the hearing. The officer said that the accused persons were in custody for the cases above until they were brought to this court on 14th February, 2008.

Council for the 2nd accused replied that that explanation was not plausible as the postmortem shows that by 7th December 2008 the victims of the assault were dead and so charging the accused persons with assault was an abuse of the court process. He finalized his submissions in reply by saying that the accused persons became aware of the murder cases in March 2008 when they were brought to court.

As already stated at the beginning of this ruling, the accused persons were first brought to this court on 18th February 2008 as per the court file. The record is silent on whether or not the accused persons were present in court on 28th February 2008 when the case was fixed for plea but what is clear is that plea was not taken on that date. It was finally taken on 06/03/2008.

It was not denied by the accused persons that they were remanded in custody for the charges preferred against them under sections 251 and 254 of the penal Code before the Resident Magistrate's court at Kabarnet.

It was further not denied that those Criminal cases were fixed to be heard on 26th June 2008. The post mortem report referred to by counsel for the 2nd accused was not shown to court by way of annexure to the application under consideration. In the event the court does not know whether what counsel stated was factual. The person or persons said to have been assaulted by the accused persons in the Resident Magistrate's court were not made known to this court and so the court is not in a position to know the connection between the victim(s) of the murder and those of the assault, if there be any. From the available evidence therefore it appears that the accused persons were in lawful custody bail not having been granted or terms thereof not having been met. There is no contravention to the statement by the police that the accused persons were brought to this court to answer murder charges from lawful custody. Nothing has been said about the fate of the Criminal cases before the Resident Magistrate Kabarnet. In the circumstances of this case no certain period of unlawful custody is shown. I find that the preliminary objection lacks merit and the same is dismissed.

DATED AND DELIVERED IN OPEN COURT AT ELDORET THIS 31ST DAY OF JULY, 2009.

P.M.MWILU

JUDGE

IN THE PRESENCE OF:-

C/C - Paul Ekitela

Mr. Magare for 1st accused

Mr. Kigamwa for 2nd accused

Mr. Chirchir for the state

Applicants - Present.