



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MERU**

**Criminal Case 60 of 2006**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**MARTIN GITONGA ..... RESPONDENTS**

**RULING**

The accused was brought before the court for the purpose of pleading to the offence of murder on 15<sup>th</sup> November 2006. His plea was not, however taken as the court observed that he appeared mentally unstable. The court ordered that he be examined by a psychiatrist. According to psychiatrist report dated 22<sup>nd</sup> November 2006, the accused was suffering at that time from abnormal mental illness.

An order was made as a result by the court (Lenaola, J) that the accused be detained at Nyeri Provincial Hospital's Psychiatry Unit for treatment until he is certified fit to plead. On 16<sup>th</sup> July 2007 another report was made in which the accused was found to be of normal mental status and fit to plead.

Consequently, he pleaded not guilty on 24<sup>th</sup> July 2007. When the matter came up for hearing learned counsel for the accused raised an objection based on the provisions of section 72(3) of the Constitution that the accused was detained by the police beyond the prescribed period of fourteen (14) days. That objection was argued and in my ruling of 19<sup>th</sup> February 2008 I gave the State an opportunity to investigate the delay and file an affidavit to explain the same.

An affidavit sworn by Corporal Francis Mutua on 27<sup>th</sup> March 2008 was filed on the same day. In it, it is deposed that the accused was arrested on 13<sup>th</sup> March 2006. Investigations were commenced by then officer commanding Timau Police Station, I.P. Wilson Kimani who subsequently retired from the police force. But before he retired he was being assisted in the investigation of this case by the deponent.

It is further averred that investigations were completed in time and on 28<sup>th</sup> March 2006 the accused was escorted to Nyeri Provincial General Hospital for mental assessment. The accused was found to be of unsound mind and I.P. Wilson Kimani directed that he be placed in custody until he recovers. P.C. Kipsang escorted the accused to court on 15<sup>th</sup> November 2006.

In a nutshell the accused was arrested on 13<sup>th</sup> March 2006 and brought to court on 15<sup>th</sup> November 2006, after a period of eight (8) months, yet section 72(3) of the Constitution only allows a suspect arrested on reasonable suspicion of his having committed an offence punishable by death to be detained for a period of fourteen (14) days from the date of his arrest before he is presented in court.

The burden of proving that such a suspect has been brought to court as soon as is reasonably practicable rests upon the prosecution. The accused was arrested, as I have already stated, on 13<sup>th</sup> March 2006. He was expected to be brought before the court not later than fourteen (14) days after the arrest, say 27<sup>th</sup> March 2006. Instead, a day after that date, on 28<sup>th</sup> March 2006 he was taken for mental check up. Already the police were in contravention of the Constitution. No explanation has been offered for failing to produce him in court before that date.

According to the Cpl. Mutua's affidavit the doctor found the accused to be of unsound mind on the same

day he escorted him, i.e. 28<sup>th</sup> March 2006. He returned with him to the police station and placed him in the cells. For eight (8) months, the accused remained in the police cells. He received no treatment and when finally produced before Lenaola, J, he straight away observed that the accused was mentally unstable and ordered that he be examined and treated.

Once the police arrest a suspect and investigations conducted, he must be produced before the court within the period limited by section 72(3) of the Constitution, irrespective of the mental status of the suspect. Sections 162 to 164 of the Criminal Procedure Code provide an elaborate procedure for treatment of such suspects once presented to the court.

For these reasons, I find that the detention of the accused for over eight (8) months was without justification and against the Constitution. He is entitled to his liberty. He is set free forthwith unless detained for any other lawful reason.

Dated and delivered at Meru this 28<sup>th</sup> day of May 2008.

**W. OUKO**

**JUDGE**