



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

**Criminal Case 56 of 2006**

**REPUBLIC**

**- VS -**

**AWADHI OMARI KIJAZI**

**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 14<sup>th</sup> March, 2006 at Kangeri area of Mashuuru Division in Kajiado District within Central Province, murdered EMMANUEL.”**

From the record, it is apparent that the accused was arraigned in Court on 29<sup>th</sup> May, 2006. Subsequently, I took the plea on 5<sup>th</sup> June, 2006 after the accused was granted a defence counsel by the State. After several adjournments, the trial started in earnest on 16<sup>th</sup> July, 2007. By 13<sup>th</sup> December, 2007, the prosecution had called six witnesses and closed their case. Consequently, the defence counsel prayed for a date for submissions and I granted the application and allowed him to address the court on 23<sup>rd</sup> January, 2008. However, on 6<sup>th</sup> February, 2008 the Defence Counsel submitted that the accused’s constitutional rights under Section 72(3) had been violated since he was not arraigned in court within 14 days after his arrest. Mr Ojienda explained that the accused was arrested on 14<sup>th</sup> March, 2006 and arraigned in court on 5<sup>th</sup> June, 2006 (The record shows that he was arraigned in court on 29<sup>th</sup> May, 2006). On that account, he submitted that he should be set free. To support his submissions, he relied on the following authorities:

§ *Ann Njogu & 5 others -vs- Republic*

*Misc Criminal App. No.551 of 2007*

§ *Republic –vs- James Njuguna Nyaga*

*Criminal Case No.40 of 2007*

§ *Albanus Mutua –vs- Republic*

*Criminal App. No. 120 of 2004*

Besides the above, Mr. Ojienda also submitted that the accused has no case to answer since the evidence

of most prosecution witnesses was not only hearsay but also contradictory. Apart from the above, he also submitted that the accused had acted in self-defence. That was after he was provoked by the deceased. He also pointed out that the evidence of PW1 and PW2 was contradictory.

On the other hand, Mr. Imbali, State Counsel replied that he was not able to get the investigating officer to file an affidavit to explain the delay. He further submitted that the accused was arrested on 14<sup>th</sup> March, 2006 and that the statements of the witnesses were recorded upto 23<sup>rd</sup> March, 2006. Apart from the above, Mr. Imbali also submitted that the body of the deceased did not have any identification papers and that he was a casual labourer without any fixed abode. That meant that the deceased could not be identified before a post-mortem was conducted. He further explained that it was important for the investigating officer to get access to the post-mortem report to enable him reach a conclusion on the cause of death. After the post-mortem report was received by the investigating officer on 12<sup>th</sup> May, 2006, the accused was also taken for medical examination on the same day. On 15<sup>th</sup> May, 2006, the investigating officer forwarded the file to the Attorney-General for advice. On 25<sup>th</sup> May, 2006, the latter directed that the accused be charged for the offence of murder. Within four days, the accused was presented to this court.

This Court has carefully considered the submissions by both counsels. From the above, it is apparent that the deceased person did not have any identification documents to enable police officers to get in touch with his close relatives. It does not make any sense for an accused person to be charged when the deceased has not been identified. Having considered the submissions carefully, I am of the considered opinion that the prosecution has discharged its burden of giving an explanation for the delay in arraigning the accused to court. The explanation is reasonable and cogent. In view of the above, I hereby dismiss the preliminary objection raised by the defence counsel.

After carefully considering the evidence of the six witnesses, I hereby find that the prosecution has established a prima facie case against the accused to require him to be put on his defence in accordance to Section 306 (2) of the Criminal Procedure Code, Cap 75, Laws of Kenya. The accused has the option to address the court either personally or by his advocate. In the event that the accused opts to give a sworn statement, then he will be subjected to cross-examination. He also has a right to call any number of witnesses in his defence.

Secondly, the accused has a right to make an unsworn statement and call witnesses to his defence. In the event that the accused exercises the second option, then he will not be subjected to any cross-examination.

Thirdly, the accused is at liberty not to offer any evidence. In that event, the Court will call upon the State Counsel to sum up the case against the accused person. Consequently, the court shall then call on the accused person personally or by his advocate to address the court on his own behalf.

**MUGA APONDI,**

**JUDGE.**

**6<sup>TH</sup> JUNE, 2008.**

Ruling read signed and delivered in open Court in the presence of the accused; Mr. Imbali – State Counsel for Republic and Mr. Ojienda – Advocate for Accused.

**Order:** Accused remanded in custody.

Assessors to be paid allowances.

**MUGA APONDI,**

**JUDGE.**

**6<sup>TH</sup> JUNE, 2008**