



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

Criminal Case 24 of 2008

REPUBLICPROSECUTOR

VERSUS

PETER MWANGI KAMAU.....ACCUSED

R U L I N G

The accused, PETER MWANGI KAMAU was, on 10/3/2008, charged with the murder of STEPHEN KARANJA, contrary to Section 203 as read with Section 204 of the Penal Code, Cap. 63, Laws of Kenya.

The alleged offence was committed on 19/1/2008 at Laundry Estate in Baba Ndogo within Nairobi.

On 24/4/2008, just before hearing commenced, the accused filed this Preliminary Objection challenging the legality of these proceedings under Section 72 (3) (b) of the Constitution which requires that an arrested or detained person arrested on reasonable suspicion of having committed a capital offence must be brought to court as soon as reasonably practicable, and in any case before the expiry of 14 days from the date of his/her arrest. Any proceedings instituted outside the said period of 14 days is illegal, null and void and the accused must be released forthwith unless the prosecution can satisfactorily explain the delay.

The grounds for the application are as under: The accused was arrested on 19/1/2008 and brought to court on 19/3/2008.

That is 60 days after his arrest and clearly long after the lapse of the 14 days permitted by the Constitution.

The prosecution have not challenged the fact of the delay. What their Affidavit, deponed by Cpl. John Kipchumba, states is briefly that the postmortem could not be conducted in time because the deceased lived alone and there was nobody to identify the body of the deceased, the death occurred during the Post – Election period and getting witnesses was very difficult. Finally, the Affidavit states that the police could not charge the accused without tangible evidence.

In support of his application, the accused cited and relied on NDEDE VS. REP. [1991] KLR 567; GITHUKU VS. REP. [2007] I E.A. 83 and MUTUA VS. REP. [2007] I E.A. 232.

I have perused the pleadings and considered the submissions by both sides and I have reached the following findings and conclusions.

Once the fact of delay is conceded, as herein, the only question to determine is whether the prosecution have explained the delay satisfactory to the court. That is to be found, in this case, in the affidavit of Cpl. John Kipchumba.

In my humble view, the reasons given therein fall far short of the delay envisaged in Section 72 (3) (b) of the Constitution and the interpretation thereof by the courts over a period close to two decades now.

While recognizing that there can be delay in complying with the 14 day period, the reasons given must fall within what the courts have held to be satisfactory and that is articulated in the case of MUTUA VS. REP. cited herein above. All that I can add is that the law touching on the subject is now relatively settled and whereas each case is unique in its facts, the reasons explaining the delay must be PARI MATERIA with those given in the MUTUA case. These include evidence that the accused could not be brought to court within the 14 days because he/she fell ill during the 14 days and hence could not be brought to court to take the plea.

In light of the foregoing, the reasons advanced by the prosecution fail the test. Besides, the legal provisions talk of “arrested upon reasonable suspicion of having committed capital offence” NOT “upon tangible evidence” which seems to be the view taken by the prosecution.

Further, as the court has held in previous rulings and judgments, if the police have a piece of evidence which they consider crucial to their case and which cannot be completed within the 14 days, they should seek court orders under Section 72(4) of the Constitution. Here, they did not do so. Accordingly, and taking into account the foregoing, I hold that the prosecution have failed to explain the delay, and that the Rights of the accused were violated by these proceedings whose genesis is an illegality.

I thus declare these proceedings null and void and order the immediate release of the accused unless he is otherwise lawfully held.

DATED and delivered in Nairobi this 22nd Day of October, 2008.

O.K. MUTUNGI

JUDGE