



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET**

**Criminal Case 55 of 2001**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**ENOCK KIMOSOP KIPCHUMBA ..... ACCUSED**

**RULING**

I took over this case from Justice Gacheche. Five (5) witnesses had testified before. On 5.2.08 the State applied for adjournment as the Investigating Office was not in Court. On 10.4.08 the State did not have witnesses. The remaining witnesses were the doctor and the Investigating Officer. The Investigating Officer and the doctor were not in Court.

On 15.5.08, the State said that the Investigating Officer had not been traced. The Court then issued summonses.

On 17.7.08 the doctor was present but the Court was not sitting. On 13.11.08, the State applied for adjournment. There were no witnesses. The State applied and I quote “for the very last adjournment”. The Counsel for accused opposed the application. The Court granted a last adjournment and fixed the matter for hearing today.

From the history of the case, it is clear now that the Investigation Officer cannot be availed in Court to testify. He has not appeared even once since I took over the case. Either the State is unable to trace the Investigation Officer or he does not wish to come to testify. There is also difficulty in getting the doctor to come.

The accused was brought to Court on 4.10.2000. He was a juvenile then. He was charged on 25-7-2001. He was held in the juvenile remand home from 4.10.2000 to 25-7-2001. At the time Committal Bundles had to be prepared before arraignment in Court. The accused has been held in custody for eight (8) years yet this trial is not concluded.

Under Section 77 of the Constitution the Accused is entitled to a fair hearing within a reasonable time by an independent and impartial Court established by law. He is entitled to a speedy and fair trial. The Court on two occasions made orders that the adjournment granted is the last adjournment. The Court’s orders must be taken seriously and obeyed.

This Court must ensure that it upholds its orders. Court has given indulgence to the State too many times. Time has come that this Court prevents a situation where it may be seen to be complacent, weak or indecisive. To allow another adjournment is to undermine this Court’s duty to the law and its dignity.

I do find that the accused is not being afforded a fair hearing within a reasonable time. He has been in custody for exactly eight (8) years without his case being concluded. To allow any further delay is to violate his Constitutional rights. This Court shall not be the instrument or vehicle to do so. This Court is the ultimate custodian and enforcer of the Constitution.

The Prosecution are unable to avail their last two very crucial witnesses. They are unable to offer any more evidence. On the basis of the evidence on record, the prosecution has not proved its case beyond any reasonable doubt.

Of more importance, the accused Constitutional right to speedy trial cannot be assured or guaranteed.

I therefore do hereby acquit the accused of the charge of murder and order that he be released forthwith from Prison remand unless otherwise lawfully held.

Enock Kimosop Kipchumba, you are free to go home.

**DATED AND DELIVERED AT ELDORET ON THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2008.**

**M. K. IBRAHIM**

**JUDGE**

**In the presence of:**

Ms. Chirchir for the State

Mr. Chepkwony for the Accused

Accused present