



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

Criminal Case 4 of 2008

REPUBLICPROSECUTOR

VERSUS

MOSES KADENYE KINYANJUI.....ACCUSED

RULING

The accused/applicant herein, MOSES KADENYE KINYANJUI was, on 10/10/08, charged with the murder of ELIZABETH WAITHIRA MUNGAI, contrary to Section 203 as read with Section 204 of the Penal Code, Cap. 63, Laws of Kenya.

The offence is alleged to have been committed on 26/11/07 at Kinale Location, Kiambu, Central Province.

On 22/4/08, the accused challenged the legality of these proceedings on the basis, inter alia that, the same violate his Fundamental Rights, as enshrined in Section 72(3) (b) of the Constitution, in that he was arrested on 26/11/07, but was not brought to court until 30/1/08.

Section 72(3) (b), under which the application is brought, is to the effect that a person arrested/detained upon reasonable suspicion of having committed a capital offence must be brought to court within 14 days of his/her arrest. Any proceedings instituted outside that period is illegal, null and void, and the accused must be released unless the prosecution can satisfactorily explain the delay.

In opposition, the prosecution, while conceding the delay, submitted that the delay was caused by the fact that the accused was arrested at a time when the country was in an election mood, and the investigations were disrupted by the post-election violence when all the officers were called to attend to that insecurity. The investigations could not be completed in time because of the above reasons. This delay involved the exhibits which were sent for analysis on 8/1/08 but due to the insecurity, nothing could be done in time. That is why the accused could not be brought to court on time.

I have closely examined and considered the pleadings and submissions by both sides.

Once the delay is conceded, as it is in this case, the only issue is whether the prosecution has satisfactorily explained the delay.

My examination of the Affidavit by P.C. Erot Danson, which hinges on the insecurity and the post-election violence, does not tally with the dates when the accused was arrested and when the post election violence erupted.

My analysis of the facts - the dates and the provisions of Section 72(3) (b) of the Constitution reveals

the following.

If the accused was arrested on 26/11/07, the period of 14 days stipulated by Section 72 (3) (b) ran out on or around 10/12/07. That was long before the elections, and the post election violence which erupted on 29th December, 2007.

Put differently, granted that the post-election violence is a matter that this court is ready, and willing, to take judicial notice of. But the dates when the accused should have been brought to court, and when the post-election violence flared up, do not coincide.

Accordingly, I find and hold that the prosecution has not satisfactorily explained the delay in bringing the accused to court within the constitutionally stipulated period of 14 days. The proceedings were instituted after the lapse of the 14 days since the arrest of the accused, and no acceptable reason has been advanced by the prosecution.

On the above reasoning, I hold that these proceedings violated, and continue to violate, the Fundamental Rights of the accused/applicant herein.

To that end I declare these proceedings illegal, null and void and order the immediate release of the accused unless he is otherwise lawfully held.

DATED and delivered in Nairobi this 10th Day of November, 2008.

O.K. MUTUNGI

JUDGE