



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Criminal Case 163 of 2003

REPUBLIC.....APPLICANT

VERSUS

LELIMEN LERAPAYO.....ACCUSED

RULING

1. The accused herein Lelimen Lerapayo is charged with the offence of murder contrary to s.203 as read with s.204 of the Penal Code. It is alleged that on 2.10.2003 at Logologo Location, Laisamis Division in Marsabit District, he murdered Nawaya Lelimen.

2. Plea was taken on 16.12.2003 and thereafter not once has the case taken off for hearing because not once has a single witness been availed. This prompted a lengthy Ruling on 24.7.2006 by Sitati J. in which the learned Judge said:

**“the application (for adjournment) will be granted with a warning to the prosecution that if there are no witnesses when the case comes up for hearing the court will not grant another adjournment.”**

3. The case was then fixed for hearing on 7<sup>th</sup> and 8<sup>th</sup> November 2006 and on those days, the hearing could not proceed for reasons that there was no interpreter but in fact there were no witnesses present. On 6.2.2007, the last adjournment was granted to the Republic as again no witness was availed. On 20.2.2002, again no witness was present and the Republic closed its case without calling any evidence. It is not the wish of this court to release the guilty on a serious charge such as murder. However, where for over 3 years, no attempt is made to produce even a single witness, then the court must presume that in fact no credible witness or evidence is forthcoming and at the same time enforce the right to a speedy trial.

4. Since there is no evidence which has been tendered against the accused person, I shall find that he has no case to answer and shall enter a finding of not guilty and order his release forthwith unless he is otherwise lawfully held.

5. Orders accordingly.

Dated and delivered in open court this 21<sup>st</sup> day of February 2007.

Isaac Lenaola

Judge

In the presence of

Mr. Isaboke for the Accused

Mr. Muteti for Republic.

Isaac Lenaola

Judge

**Further order**

1. 3 Assessors to be paid.
2. Interpreter to be paid.

Isaac Lenaola

Judge