



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**

**Criminal Case 37 of 2004**

**REPUBLIC.....PROSECUTOR**

**VS**

**ANDREW WEKESA WASAME**

**JOSEPH JUMA MARANI**

**GRIFFIN WANYAMA NAMASAKA.....ACCUSED**

**RULING**

I have gone through the previous proceedings in this file. I have observed that the accused persons herein first appeared before this court on 5.7.2004 which is slightly over 3 years ago. The matter later took off and 3 witnesses testified for the prosecution. Those proceedings were thereafter set aside and the matter ordered to proceed *denovo* before my brother Justice Ombija. The matter did not take off before Judge Ombija and I inherited the same on 24.1.2007. I again made an order that the same starts *denovo*. We took the hearing date 7 months away. The matter was supposed to proceed yesterday but there were no witnesses bonded to appear what surprised me is that the Police Officer who was in court said he had only been given his file 2 days ago and he seemed to have had no idea of what it was all about. The reason I was given for the non bonding of the witnesses was that the I.O did not know that the matter was meant to start *denovo*. That was nonetheless surprising given the fact that the order that the matter starts *denovo* was made by Justice Sergon on 5.6.2006 i.e over one year ago. This shows how lightly the prosecution takes these matters. We should never lose sight to the fact that an accused person is presumed innocent until otherwise proven guilty. The accused persons herein are still presumed innocent until they are proven guilty. If the state is taking more than 1 year to appreciate the position of their file, surely what can we read or infer from that conduct? Is this laxity, negligence, or a sheer don't care attitude because they expect to be granted an adjournment any time they apply for one? The accused persons are guaranteed a fair and speedy trial by the constitution and this is one of their inalterable rights. The same should not be taken away from them without good reason. Although admittedly, a 'reasonable time' has not been defined by the constitution, 3 years is a long time. Over 1 year to bond witnesses is definitely more than a reasonable time. The casual manner in which the prosecution treated this matter astounded me and clearly showed that the gravity of these matters and the fact that the accused persons are deprived of their liberty by the long incarceration seems to evade the prosecution.

To cut a long story short, I was not given any sufficient or indeed any reason whatsoever as to why the witnesses were not bonded and consequently why I should allow the application for adjournment. I have no reason whatsoever to adjourn this matter further. The court cannot condone the kind of laxity that has been shown by the prosecution in this matter. Accordingly, my finding is that the constitutional Rights of the accused persons to a speedy trial within a reasonable time has been infringed by the state and I find no reason why the accused persons should be remanded in custody any longer. Accordingly, I invoke my inherent powers as bestowed on me by section 60 of the Constitution of Kenya

discharge the accused persons herein and order that they be set at liberty unless otherwise lawfully held. I further order that they shall not be re-arrested and charged with any other offence based on the same facts.

A certified copy of this ruling be supplied to D.C.I.O, Bungoma, and P.C.I.O Western Province as they are put on notice that similar measures will be applied in similar cases where such lack of seriousness is on the part of the prosecution is noted.

W. KARANJA

JUDGE

24/7/2007

DELIVERED today in open court in presence of Mr. Ndege for state, MS

Mukhongo for Makali for the accused and the accused persons.

W. KARANJA

JUDGE

24/7/2007