

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL CASE NO. 21 OF 2004

REPUBLIC ::::::::::::::::::::::::::::::::::::::: PROSECUTOR
V E R S U S
LIVINGSTONE LITAYWA ::::::::::::::::::::::::::::::::::::::: ACCUSED

J U D G E M E N T

The State failed to offer evidence in this case to prove the charge of murder which the accused is facing and closed its case yesterday. As the charge has not been proved, the accused is entitled to an acquittal. I accordingly acquit him. Unless otherwise lawfully held, the accused shall be released forthwith and set free.

I seize this opportunity to deprecate the manner in which the police in this District continue to attend to investigations in Criminal cases and particularly the cavalier manner in which the issue of bonding of witnesses is handled. Far too often adjournments are sought because the police have failed to bond witnesses. This has resulted in waste of valuable judicial time. Where witnesses are not produced on the day of the hearing, this court shall not hesitate to dismiss cases unless there are sound and plausible grounds to justify adjournment.

I hasten to add that the police must take seriously the issue of bonding of witnesses. Unless this is done and witnesses produced in court on the dates when cases are fixed for hearing, the system of fixing cases for hearing will become scandalous and a mockery. We require an efficient system in which cases proceed to hearing when they are fixed unless there are compelling reasons to adjourn.

It is also necessary for the court to once again re-echo that the constitution of Kenya requires persons held in connection with capital offences to be charged within 14 days of arrest or detention and it is illegal to hold any citizen for a period longer than this. Once charged, an accused person must be afforded a fair hearing within a reasonable time. These constitutional requirements must be adhered to.

Dated at Kakamega this 13th day of July, 2005.

G. B. M. KARIUKI

J U D G E