



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

CRIMINAL CASE NO. 133 OF 2003

REPUBLIC.....PROSECUTOR

Versus

WILLIAM MAINA WAMONDO.....ACCUSED

RULING

Hearing dates in this case, the 8th and 9th December 2004, were fixed with consent of the Prosecution and the Defence Counsel in this court on 9.12.2003. By then the State was represented by a State Counsel Mr. Obua.

Since that time, it is now a full year the Prosecution on being well aware of that date just as the court and the defence counsel and the Accused himself were. The Prosecution knew right from that time or even before that time, the case the Prosecution was to prepare against the Accused and if the presence of a report of the Government Analyst was necessary, the Prosecution knew. As the hearing date drew near, the Prosecution, if genuinely interested in the Prosecution of the Accused person and were desirous that justice be done, ought to have been concerned about the non-availability of the report of the Government Chemists and taken steps to find out who to ensure that the report is available on the hearing date.

Witnesses will have presented no problem to a prosecution which is interested in fair, genuine and speedy prosecution because these are local people together with Government officers and a full year was even more than ample time to bring those people to this court to give evidence.

To-day the court has not even been told why those witnesses have not been brought despite the fact that they were supposed to come yesterday and when they failed to come, this court gave the prosecution up to to-day to bring them.

Clearly that is the conduct of a Prosecution which is not only interested in prosecuting this case but a prosecution which is also don't care, inhuman and insensitive as otherwise in the circumstances of this case the prosecution would not have been asking for adjournment. The right thing for them to do was to withdraw the case. But they do not want to do that right thing. Yet they are well aware that adjourning hearing of this case to-day means that the Accused will have to go and wait for another full year from today in order to reach the next hearing date. In other words, the prosecution knows the state of the remand period at this court station in murder trials. It is a full one year as the court cannot get a nearer date and the Prosecution knows that and this court needs their co-operation to fight that situation. To reduce the remand period. Unfortunately the court is not getting that co-operation and as a result what is happening to-day is happening.

It is partly because the prosecution knows that whenever someone outside there, including the Accused person, begins pointing a finger, that finger will always be pointed at the court and the court only. No

where else so that everybody else, including the Prosecution, remains an angel as the court remains the only devil.

Those angels do not even stop to think that the Accused's constitutional rights under Section 77(1) of the current Constitution are being contravened – by the required adjournments which in effect remove the element of fair and speedy trial. They do not stop to think that the Accused's human rights as declared by Article 10 of the United Nations Universal Declaration of Human Rights requiring fair and speedy trial are being violated. They do not stop to think that the Principal of natural justice to the effect that justice delayed is justice denied is being violated.

For those people, as long as the court, the scapegoat is there to blame, that is all they need and they can become inhuman and insensitive with impunity.

As I am not prepared to succumb to that pressure to-day, as it must not be forgotten that as of to-day, under this country's legal system as reinstated in *Section 77(2)(a)* of the current Constitution of Kenya the Accused person is being presumed innocent until proved guilty. I therefore do hereby dismiss the learned State Counsel's application for adjournment and order that the hearing proceeds further now.

Dated this 9th day of December 2004.

J. M. KHAMONI

JUDGE

M/S Ngalyuka:

We have already indicated that we do not have any more witnesses to offer today. And following the court's ruling, I do not have more evidence to offer and do close the Prosecution's case against the Accused.

J. M. KHAMONI

JUDGE

RULING

The above being the position, I am not satisfied that the Prosecution has adduced sufficient evidence to require the Accused person be put on his own defence.

Accordingly under provisions of Section 306 (1) of the Criminal Procedure Code, I do not find the Accused person guilty. I do hereby acquit him and order that he be released forthwith unless lawfully detained in some other cause.

Assessors and civilian witnesses who gave evidence to-day, be paid their respective allowances for to-day.

Dated this 9th day of December 2004.

J. M. KHAMONI

JUDGE