



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
CRIMINAL CASE 59 OF 2006

REPUBLIC. PROSECUTOR

VERSUS

JULIUS MBUTHIA KARITHA. ACCUSED

R U L I N G

The accused/applicant, **JULIUS MBURIA KARITHA**, was on 8th June, 2006, charged with the murder of **NJATHI MAINA**, 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 20th April 2003 at Dagoretti corner shopping centre, Nairobi, jointly with others not before court.

On 21st May, 2008 the accused challenged the legality of these proceedings on the basis that the same violate his fundamental rights, enshrined in section 72(3) (b) of the constitution in that he was arrested on 24th April, 2003 and was not brought to court until 15th October, 2003.

The provisions of section 72 (3) (b) of the constitution under which the application is brought are to the effect that a person arrested on reasonable suspicion of having committed a capital offence must be brought to court as soon as is reasonably practicable and at any rate not later than 14 days of his arrest.

Any proceedings instituted after the expiry of the 14 days is illegal null and void and the accused must be acquitted unless the prosecution can satisfactorily explain the delay to the court.

On the basis of the foregoing facts and the law, the accused urges this court to acquit him and release him forthwith.

In support of his application the accused cited and relied on Miscellaneous Application Number 551 of 2007 – **ANN NJOGU Versus REPUBLIC**.

In opposition, the state relied on an affidavit by Cpl. Richard Matoke, dated 23rd February, 2009. The learned counsel further submitted that the case declared a mistrial in 2006, and accused was charged a

fresh on 8th June, 2006, and accused thus brought to court on time, and there was no delay.

I have perused the said affidavit, and considered the submissions by both counsels. There is no evidence that the accused was ever released pursuant to a court order since 24th April, 2003. Even if the charge on 8th June, 2006 were a fresh charge and this is not true given that that is no other charge in the court file, and even if there were, that would not cure the original illegal proceedings before the same were declared a mistrial.

Further, the affidavit does not in any way explain the delay, as section 72(3) (b) of the constitution has been interpreted by the courts over the last two or so decades.

The gist of all such interpretation is captured in the now overcited Criminal appeal Number 120 of 2004 – **ALBANUS MWAISA MUTUA Versus REPUBLIC.**

The affidavit before me is nothing more than a chronology of the events since arrest, and that does not meet the test set by the court of appeal in the above Mutua Case.

Accordingly, I hold these proceedings to be a nullity and to that end, I acquit the accused and order for his immediate release unless he is otherwise lawfully held.

Dated and delivered in Nairobi, this 4th Day of May, 2009.

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O K MUTUNGI

JUDGE