

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Criminal Case 38 of 2003

REPUBLIC PROSECUTOR

VERSUS

JACKSON KITHINJI BURUKI ACCUSED

RULING

The accused was charged with murder contrary to section 203 as read with 204 of the Penal Code. He was committed for trial to the High Court on 31st July 2003. The prosecutions case has been heard and at the point at which the defence case was to be heard, the accused raised a preliminary objection that his constitutional rights embodied in section 71(3) (b) of the Constitution were violated. Counsel for the accused submitted that the accused was arrested on 26/4/2002. That he was arraigned in court on 7th June 2002. He estimated that the accused person was held in custody for 42 days before being brought to court. The investigating officer in this case was called to explain. He stated that indeed the accused was arrested on 26th April 2002 and because during that time the procedure of committing an accused to the High Court for trial by the magistrate court was a place the accused was therefore presented to the magistrate court on the same day of arrest. The procedure of committal for trial in the High Court of persons facing murder charge under S. 230 to 235 Criminal Procedure Code, now repealed, was then operational. That what took long thereafter was the preparation of the committal bundle which had been forwarded to the state counsel. The proceedings in the lower court began on 7th June 2002. In view of the explanation given by the investigating officer, it is clear that the accused person's constitutional rights were not violated. He was presented to court the same day he was arrested. That being so, I find that there is no merit in his preliminary objection and I do hereby dismiss the same and order that the defence hearing do proceed.

Dated and delivered at Meru this day of 1st October 2009.

MARY KASANGO

JUDGE