



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Case 30 of 2008

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES NDIRANGU MUTHEE..... ACCUSED

RULING

The accused, CHARLES NDIRANGU MUTHEE, was, on 7/4/2008 charged with the murder of ANN WANJIRA MBUGI, 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 12/3/08 at Nginyi Village, Thika District, Central Province.

Before hearing could get under way, the accused, filed, on 22/4/08, a Notice of Preliminary Objection, challenging the legality of these proceedings against him, on the grounds, inter alia; that his Fundamental Rights, as enshrined in Section 72 (3) (b) and Section 77 of the Constitution were, are, and continue to be, violated in that whereas he was arrested on 12/3/07, he was not brought to court until 8/4/08. That is 13 days outside the constitutionally permitted period of 14 days.

Section 72(3) (b) of the Constitution provides that a person arrested on reasonable suspicion of a capital offence must be brought to court within 14 days of his arrest. Bringing such person to court outside that period renders the proceedings illegal, null and void, and the accused must be released, unless the prosecution can, and does, satisfactorily explain the delay to court.

In opposition to the application – objection – the prosecution sought, vide an Affidavit by CPL. MOSES NJOGU, dated 17/6/08, to explain the delay.

The gist of the Affidavit is as follows: that while admitting the dates of arrest and bringing the accused before court after the lapse of the 14 days permitted by the Constitution the compiled file was sent to the State Law Office on 26/3/08, who on 27/3/08, directed that the investigations do cover various crucial points to the case; the file could not therefore be completed within the required period as key witnesses had to be traced and the family of the deceased had left their original place of abode; that the investigator (deponent) did his work diligently and focused to ensure that justice prevailed for both the accused and the deceased, and the accused was arraigned in court within reasonable time.

In addition to the Affidavit, the prosecution urged this court to find that the reasons given for the delay to be reasonable and dismiss the application.

To the above prosecution position, the defence submitted that this was not only a sad affair, but simple negligence by the prosecution. The police should learn to follow the law and apply for more time, if need arises to do their investigations. They, the police, did not do that.

Having carefully considered the pleadings and the submissions for both sides, I find and conclude as follows:

It is a common ground that the accused was not brought to court within the constitutionally stipulated period of 14 days. There was a delay, and the next issue is whether the prosecution has satisfactorily explain the delay. For that, the answer comes from the Affidavit of Cp. Mose Njogu, herein earlier referred to.

What constitutes a satisfactory explanation of the delay was extensively dealt with by the Court of Appeal, in Cr. Appeal No. 182 of 2006 – ELIUD NJERU NYAGA VS. REPUBLIC; where the court gave a non-exhaustive list of the instances when a delay to bring an arrested person before court can be considered satisfactory.

Whereas the facts and circumstances vary from case to another, the reasons advanced to explain the delay must in principle be *pari materia* with those given by the Court in the above ELIUD NJERU NYAGA. Such reasons include, inter alia, where the accused fell ill during the 14 days the police were entitled to hold him in custody; where the accused is presented to the court but his case is terminated for one reason or other, is discharged and subsequently recharged afresh. It is also a reasonable explanation of the delay where there is no court of competent jurisdiction before which the accused could be brought within the stipulated time or where the vehicle transporting the accused to court breaks down and he cannot be brought to court within the prescribed time.

Looking at the Affidavit put in by the prosecution in an effort to explain the delay, I find and hold that the reasons given therein are not satisfactory. They all fall within what this court has held to be beurocratic reasons and efforts to pass the blame from one unit of the prosecution docket to another.

Before concluding, I must add that where and if the police find that they cannot complete their investigations into an essential part of their case, they should, under Section 72(4) of the Constitution, seek extension of the stipulated time by an application to the court. It is this failure on the part of the investigators that has led to current crisis of good cases being thrown out by the courts. The prosecution should act according to the law for the protection of all – the accused and the general public.

All in all, and for the above reasons, I find and hold that the Fundamental Rights of the accused were; are; and continue to be, violated by these proceedings and the prosecution has not satisfactorily explained the delay.

Accordingly, I find and hold the proceedings to have their genesis in an illegality and are therefore null and void.

I order that the accused be released forthwith, unless he is otherwise lawfully held.

DATED and delivered in Nairobi, this 1st Day of October, 2008.

O.K. MUTUNGI

JUDGE