



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Case 52 of 2003

REPUBLIC PROSECUTOR

Versus

ROBERT KARIUKI KIUMBE ACCUSED

RULING

By the information dated 22nd August 2003 the accused was charged with *Murder contrary to Section 203 as read with 204 of the Penal Code*. Before the commencement of his trial the accused raised a preliminary objection to the effect that his constitutional rights as provided under *Section 72(3)(b)* of the constitution were violated. In short submission Mr. Mwangi advocate counsel for the accused stated that the accused was arrested on 5th February 2003 and the plea was taken on 3rd September 2003. He continued to submit that in view of that period of detention the accused rights under the constitution were violated. In short response learned state counsel said that as at the time of the accused arrest the law required committal proceedings to be conducted by the lower court. That due to the committal proceedings that the accused underwent that explained the delay why the accused was brought for plea before High Court in September 2003. As correctly stated by the state counsel the law up to May 2003 was to the effect that when one was charged with murder they had to go through committal proceedings in the lower court. This explains why the accused was first taken to the lower court. As a consequence of the law as it was then and without the court being furnished with the details of when the accused was arrested as compared to when he first appeared in the lower court for committal proceedings it does become extremely difficult for this court to find that the accused was not brought before court within reasonable practicable period as required under the constitution. The court of appeal has in recent past found that the detention in a case of non capital offence for more than 24 hours and in case of capital offence for more than 14 days is not in itself evidence of violation of constitutional rights. This was stated in a case of DOMINIC MUTIE MWALIMU vs REPUBLIC Criminal Appeal No. 217 of 2005. In that case the court stated as follows:-

“A plain reading of that provision of the constitution as a whole shows that the provision requires that a person arrested upon reasonable suspicion of having committed or about to commit a criminal offence, among other things, has to be brought before the court as soon as is reasonably practicable (emphasis ours).

..... Thus, where an accused person charged with a non-capital offence brought before the court after twenty-four hours or after fourteen days where he is charged with a capital offence complains that the provisions of the constitution has not been complied with, the prosecution can still prove that he was brought to court as soon as

is reasonably practicable notwithstanding, that he was not brought to court within the time stipulated by the constitution. In our view, the mere fact that an accused person is brought to court either after twenty-four hours of the fourteen days, as the case may be, stipulated in the constitution does no ipso facto prove a breach of the constitution. The working of Section 72(3) above is in our view clear that each case has to be considered on the basis of its peculiar facts and circumstances. In deciding whether there has been a breach of the above provision the court must act on evidence.”

I make a finding that in the circumstances where the accused was obviously subjected to committal proceedings there was no clear violation of his constitutional rights. For that reason the preliminary objection fails and is dismissed.

Dated and delivered this 18th day of December 2008.

MARY KASANGO

JUDGE



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