



Case Number:	Criminal Case 72 of 2004
Date Delivered:	24 Jul 2007
Case Class:	Criminal
Court:	High Court at Bungoma
Case Action:	Ruling
Judge:	Wanjiru Karanja
Citation:	REPUBLIC v MARTIN NYONGESA WEFWAFWA [2007] eKLR
Advocates:	-
Case Summary:	[RULING] Criminal Practice and Procedure-prosecution -production of witnesses in court-where the prosecution asked for a last (final) adjournment 6 months prior and as at present still not even a single witness is available-accused has been in custody for almost 3 years-last time the state counsel informed the court that witnesses could not be traced-whether under the circumstance the accused person ought to be discharged
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

Criminal Case 72 of 2004

REPUBLIC.....PROSECUTOR

VS

MARTIN NYONGESA WEFWAFWA.....ACCUSED

RULING OF THE COURT

Even as at the time the State Counsel is sitting down after his reply, he has not informed the court why there are no witnesses in court today. He, himself is on record as having requested for the last (final) adjournment on 24.1.2007, i.e 6 months ago. He has not told us why 6 months down the line not even a single witness is available.

Justice must balance both sides of the scales. The accused person has been in custody for almost 3 years now. Last time, the State Counsel informed the court that the witnesses could not be traced. He has not told us what efforts have been made to trace them or what chances there are that they will be traced. The accused person cannot be detained in custody forever at the whims of the prosecution, more importantly, adjournments should not be granted as a matter of course even when it is evident that the police (I.O) are sleeping on their job and are not making any efforts to have the witnesses come to court.

An accused person is presumed innocent until he is proven guilty. He also has an inalienable right to a fair and speedy trial. It is the duty of the court to ensure that those rights are not trampled upon by the state.

My view is that the interests of justice demand that this matter should not be adjourned further. Indeed I have not been given any reasons why the same should be adjourned further. I realize that this is a very serious charge where a life was lost. This is the more reason why the prosecutor should have taken the matter more seriously and bonded the witnesses.

My sense of justice demands that this wrongful incarnation of the accused person be brought to an end.

Accordingly, the application for adjournment is hereby refused. The court is hereby discharges the accused person and directs that he should be set at liberty unless he is otherwise lawfully held. He should also not be charged with any offence on the same facts. These orders are made in accordance with the inherent power of this court as bestowed on me by section 60 of the Constitution of Kenya

W. KARANJA

JUDGE

24/7/2007

ORDER: Assessors be paid their allowance for today.

W. KARANJA

JUDGE

COURT: Ruling be typed. A certified copy thereof be supplied to the State Counsel, PCIO, Western Province and DCIO, Bungoma to note.

They are put on notice that if they do not pull up their socks, such laxity will be met with similar measures.



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