



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CRIMINAL MISC. APPLICATION NO. 5 OF 2017**

**EVANS NDWIGA KARIRA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. This is an application for revision brought under Section 362 of the Criminal Procedure Code for review of the orders of Hon. S.K. Mutai.
2. The grounds relied on is that no compelling reasons were given as required by Article 49(h) of the Constitution. The prosecution only gave ordinary reasons to the court which granted them 10 days continued detention at Manyatta police station from the 17/03/2017. The applicant is required to appear for mention before the Honourable Mutai on 31/03/2017 when the 10 days detention ends.
3. Ms. Mwanza for the respondent supported the detention order arguing that it was necessary for police to complete investigations. However, she had no objection, that the the applicant be released on bail pending arrangement in court when the police are ready.
4. I have considered the arguments of both parties in the application. The relevant law is Article 49(1)(h) of the Constitution which provides for release of an arrested person in the following context:-

*“(h), to be released on bond or on bail, on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”*
5. I have perused the court record and noted that the prosecution said they needed only 14days to complete their investigations. The applicant was to remain in police custody pending being charged on completion of investigations at the end of the period the court would allow.
6. Although the order was allowed, the completion of investigations does not amount to a compelling reason. The applicant explained that he had been summoned by the police on 4/03/2017 and that he co-operated. He was then released and arrested on 16/03/2017 and arranged in court for extension of time on 17/03/2017. the prosecution did not explain what they did with the time at their disposal between 4/03/2017 and 17/03/2017.
7. The applicant counsel was present in court and explained that his client had been summoned earlier. The court granted 10days for the continued detention.

8. A compelling reason must be one that is weighty and convincing to justify the court not to release the arrested person. In the present case, there was no compelling reason given to the court and no explanation was given as to how the police had utilized the time they had since the commission of the offence on 4/03/2017.

9. I reach a finding that the honourable magistrate's order was not supported by compelling reasons and did not therefore pass the test of Article 49(1)(h).

10. The court is empowered by Section 362 of the Criminal Code to revise the said orders.

11. The orders of the learned magistrate made on 17/03/2017 are hereby quashed.

12. The applicant be released on a bond of Kshs.100,000/= with one surety pending to be arranged in court.

13. It is hereby so ordered

**DATED, DELIVERED AND SIGNED THIS 27TH DAY OF MARCH, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Mr. Eddie Njiru for Applicant**

**Ms. Mwanza for Respondent**