



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYAHURURU**  
**MISC.CR.APP.NO.9 OF 2017**  
**CHRISTOPHER KARUMBA NDUATI.....APPLICANT**  
**- V E R S U S -**  
**REPUBLIC.....RESPONDENT**  
**R U L I N G**

By the Notice of Motion dated 16/6/2017 the applicant, Christopher Karumba Nduati moved this court seeking the following orders:

- (1) That the applicant be produced from custody and the lower court Nyahururu Chief Magistrate's Court P & C case No.54 of 2017 be placed before this court;
- (2) That the orders made by Hon. Mukenga – R.M. in P & C No.54 of 2017 remanding the applicant in custody at Thomson Falls G.K. Prison for a period of 30 days from 13/6/2017 until 16/7/2017 and the proceedings in the said have been reviewed declared a nullity and invalid and be set aside forthwith and accused be discharged from custody.

The grounds for the said application are *inter alia*, that the applicant has not been charged with any offence or has he been heard or convicted of any offence following a fair trial; that there is no judgment or decree entered against the applicant following which the applicant has been detained in custody.

I have had an opportunity to peruse the proceedings in P & C 54 of 2017. I wish to correct the record in the application that these proceedings are before Hon. Ochanda, Resident Magistrate but not Hon. Mukenga.

The proceedings were commenced by a report from Gladys Langat, the Children's Officer, Nyandarua North which required the summons of the applicant to show cause why he is not supporting his children's needs especially education.

This letter followed a complaint by the applicant's former wife that the applicant had neglected his parental responsibilities of taking care of his children. On 13/6/2017 when the applicant appeared before the court, the applicant said he had nothing. On 16/6/2017, the applicant said 'I have not remitted' and that is when he was remanded in custody. However, nowhere on record was the applicant told to show cause why he was not taking care of the children as was required of him nor was the sum of money to be paid determined and a default sentence given.

I think that the court should record in more detail what the proceedings are all about and the reasons for

any orders it may make. For that reason, I find that the order remanding the applicant is illegal as it lacks any basis.

I therefore quash the same and set the applicant at liberty forthwith.

The court was invited to quash the whole proceedings in P & C 54/2017 but I do not find the need for that. The case relates to the care and welfare of children and the court will not dismiss it based on technicalities.

I direct that the applicant do report back to the trial court and the court should comply with due process in relation to fair hearing.

Mention before the trial court on 3/7/2017. It is so ordered.

**Dated and Signed at NYAHURURU this 29<sup>th</sup> day of June, 2017.**

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**R.P.V. Wendoh**

**JUDGE**

**PRESENT:**

Mr. Mutembei – Prosecutor

Mr. Sigilai for Applicant

Applicant - present