



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
JUDICIAL REVIEW NO. 305 OF 2009 (MACHAKOS)
FORMERLY J.R. 537 OF 2009 (NAIROBI)

IN THE MATTER OF SECTION 84 (1)

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER SECTION 72 (3) (B), CONSTITUTION OF KENYA

BETWEEN

EDWARD LWANGU MAMBOLEO PETITIONER

AND

PRINCIPAL MAGISTRATE, MAKINDU LAW COURTS RESPONDENT

J U D G M E N T

1. The petition dated 7/9/2009 seeks the following orders:-

- 1. The Petitioner's Constitutional rights under section 72 (3) of the Constitution in the matter of Makindu Principal Magistrate's Court case No. 60 of 2007, Republic versus Edward Lwangu Mamboleo have been grossly violated as the Petitioner was detained in the police cells for 8 days, instead of 24 hours without any explanation.**
 - 2. The trial of the Petitioner before the said Principal Magistrate, Makindu be quashed as a direct consequence of the gross violation of the Constitutional rights of the Petitioner under section 72 (3) (b) of the Constitution.**
 - 3. The Petitioner be set at liberty forthwith unless otherwise lawfully held and all bail/bond deposits be returned/refunded.**
 - 4. Such other order as this Honourable Court shall deem just."**
2. It is averred in the affidavit in support of the petition that the petitioner was arrested and charged at the **PM's Court Makindu Criminal Case No. 60 of 2007** with two counts; that is **stealing by servant** contrary to **section 281** of the **Penal Code** and with the 2nd count of **giving false information to a person employed in public service** contrary to **section 129 (a)** of the **Penal Code**. The Petitioner's complaint is that he was detained at the police cells at **Makindu Police**

Station from 14/1/2007 to 22/7/2007, a period of eight days instead of being produced in court within 24 hours under **section 72 (3) (b)** as provided of the then **Constitution**. However, that topic is now moot. The Applicant's remedy lies in civil compensation. (See for example, **Julius Kamau Mbugua –vs- Republic (Criminal App. No. 50 of 2008)**).

3. The upshot is that I find no merits in the petition and dismiss the same with costs.

.....

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 22nd day of May 2014.

.....

B. THURANIRA JADEN

JUDGE