

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 23 OF 2013

IN THE MATTER OF

NAIROBI CHIEF MAGISTRATE'S COURT

CRIMINAL CASE NO. 357 OF 2007

BETWEEN

PAUL NGUGI NGURE PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The matter before the Court is a reference under **section 84** of the former Constitution seeking the High Court's decision on allegations of breach of the applicant's fundamental rights and freedoms under the Bill of Rights. The question raised for determination is, "***whether the incarceration of the accused herein from 15.2.2007 to 01.03.2007 when he was arraigned in 2007 for plea taking contravened his fundamental rights and freedom guaranteed under section 72(3) of the Constitution of Kenya.***"
2. The reference for determination framed by the Magistrate deals with pre-trial detention and violation of **section 72(3)** of the former Constitution. The breach of pre-trial rights and particularly pre-trial detention was exhaustively considered by the Court of Appeal in the case of ***Julius Kamau Mbugua v Republic CA Nairobi Criminal Appeal No. 50 of 2008 (Unreported)***. The Court held that pre-trial detention issues, such as those raised in the reference, do not affect the trial and should be dealt with separately by the accused filing a separate petition.
3. In the circumstances and under the power vested in this Court under **section 84** , I direct as follows;
 - a. **The reference dated 17th January 2013 be and is hereby struck out.**
 - b. **The order of stay of proceedings issued on 13th July 2010 by Lady Justice Khaminwa be and is hereby discharged.**
 - c. **The Magistrate's Court is directed to deal with *Nairobi Chief Magistrates Criminal Case No. 357 of 2007* in accordance with the law.**
 - d. **The subordinate court file to be returned forthwith to the subordinate court.**

DATED and DELIVERED at NAIROBI this 23rd day of January 2013

D.S. MAJANJA

JUDGE