



IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

JUDICIAL REVIEW DIVISION

MISC. APPL. NO. 290 OF 2013

BETWEEN

CAROLYNE MURUGI NDWIGA..... APPLICANT

AND

THE ATTORNEY GENERAL1ST RESPONDENT

THE HON. THE CHIEF MAGISTRATE,

MAKADARA.....2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS ...3RD RESPONDENT

JUDGMENT

The petitioner has moved the court by way of a petition dated 7th March 2013 to vindicate her rights which were violated as a result of her incarceration in police custody at Kayole Police Station from 14th April 2013 to 17th April 2013. The State does not deny the violation which is a breach of **Article 49** of the Constitution as she was kept in police custody for a period longer than that permitted by the Constitution. The petitioner has now been charged before a court for the offence of Malicious Damage to Property contrary to **section 339(1)** of the *Penal Code*.

As the pre-trial violation is admitted, the only issue for determination is what relief should be granted to in the circumstances. A vindication of the right by an appropriate declaration is one of the remedies the Court can give under **Article 23** of the Constitution. Damages are also a remedy. Damages to be awarded are very much at large and within the court's discretion. The petitioner's advocate has cited the sum of Kshs. 500,000.00 but I think is inordinate given that in cases where there is prolonged detention accompanied by torture, cruel and inhuman treatment, the court has awarded sums ranging from Kshs. 250,000/= to 2 Million.

In this case the violation was admittedly not accompanied by mistreatment. The petitioner was granted police bail at the police station which she could not raise and the action was neither deliberate nor malicious. In view of the violation I make the following orders;

- a. I declare that the petitioner rights were violated contrary to Article 49 (1)(f) when she was held at Kayole Police Station from 14th April 2013 to 17th April 2013.
- b. I award the petitioner the sum of Kshs 15,000.00 as general damages.
- c. The costs of the case assessed at Kshs 10,000.00 to be paid by the 1st respondent on behalf of the State.

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

D.S. MAJANJA

JUDGE

Mr Mbutia instructed by B. N. Mbutia and Company Advocates for the petitioner.

Ms Spira, Litigation Counsel, instructed by the Office of the Director of Public Prosecutions.